TEXAS REGISTER

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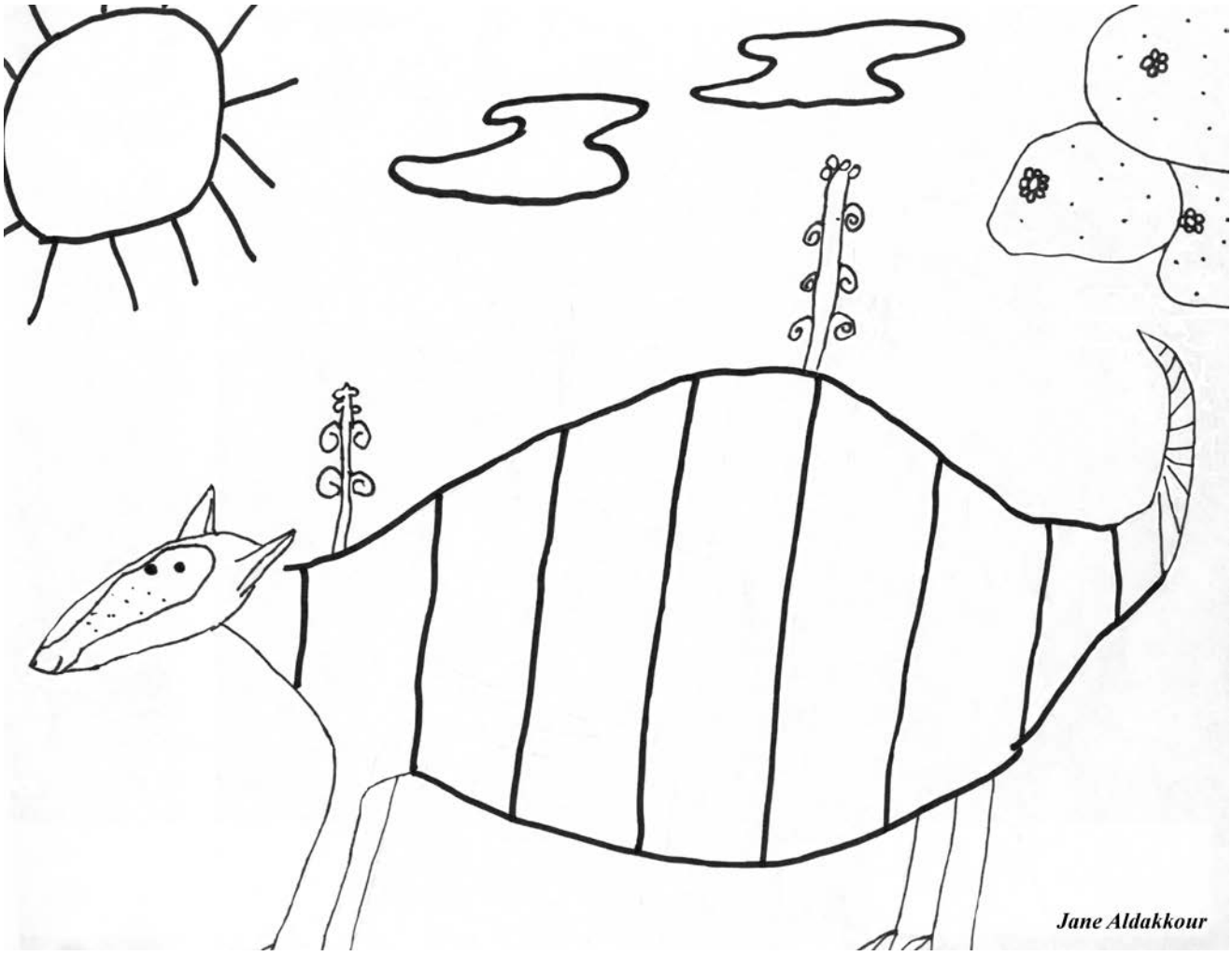

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 8, 2013

Appointed to the Executive Committee of the Texas Office for the Prevention of Developmental Disabilities for a term to expire February 1, 2019, Valerie Kiper of Amarillo (reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2019, Michael J. Keller of Plainview (reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2019, Barbara Sunderland Manousso of Houston (reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2019, Donna Scott Tilley of Colleyville (reappointed).

Pursuant to Article 5, Section 11 of the Texas Constitution, appointed to serve as Justice of the Tenth Court of Appeals in Waco, Texas in case number 10-13-00009-CV; *Hubert Warren v. McLennan County Judiciary, Rex D. Davis, Bill Vance, Tom Gray, et al:* Judge Karen G. Scholer of Dallas. Judge Scholer will serve in the place of Chief Justice Thomas Gray and Justice Rex Davis who have disqualified themselves from sitting in the above referenced case.

Pursuant to Article 5, Section 11 of the Texas Constitution, appointed to serve as Justice of the Tenth Court of Appeals in Waco, Texas in case number 10-13-00009-CV; *Hubert Warren v. McLennan County Judiciary, Rex D. Davis, Bill Vance, Tom Gray, et al:* William "Bill" Whitehill of Dallas. Judge Whitehill will serve in the place of Chief Justice Thomas Gray and Justice Rex Davis who have disqualified themselves from sitting in the above referenced case.

Pending Senate confirmation, appointed to the Executive Council of Physical Therapy and Occupational Therapy Examiners for a term to expire February 1, 2015, Arthur Roger Matson of Georgetown (reappointed).

Pending Senate confirmation, appointed to the Texas Board of Orthotics and Prosthetics for a term to expire February 1, 2019, Richard Neider of Missouri City (reappointed).

Pending Senate confirmation, appointed to the Texas Board of Orthotics and Prosthetics for a term to expire February 1, 2019, Ray Smith of Bloomington (replacing Erin Berling of Coppell whose term expired).

Pending Senate confirmation, appointed to the State Soil and Water Conservation Board for a term to expire February 1, 2015, Joe L. Ward of Telephone (reappointed).

Pending Senate confirmation, appointed to the Upper Neches River Municipal Water Authority Board of Directors for a term to expire February 1, 2019, W. Barry James of Palestine (reappointed).

Pending Senate confirmation, appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2015, Walker R. Beard of El Paso (reappointed).

Pending Senate confirmation, appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2015, Clayton P. Black of Stanton (replacing Donna Walz of Lubbock whose term expired).

Pending Senate confirmation, appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2015, Sheryl R. Swift of Galveston (reappointed).

Pending Senate confirmation, appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2015, Jamie S. Wickliffe of Midlothian (reappointed).

Pending Senate confirmation, appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2015, Daniel P. "Dan" Powers of Carrollton (reappointed).

Rick Perry, Governor

TRD-201300614

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Proclamation 41-3315

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the Texas Senate in the membership of District No. 6, which consists of a part of Harris County; and

WHEREAS, the results of the special election held on Saturday, January 26, 2013, have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 203.013(e) of the Texas Election Code requires a special runoff election to be held on either a Tuesday or Saturday and not earlier than the l2th or later than the 25th day after the date the special runoff election is ordered; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires the special runoff election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in District No. 6 on Saturday, March 2, 2013, for the purpose of electing a State Senator for District No. 6 to serve out the unexpired term of the Honorable Mario V. Gallegos, Jr.

Early voting by personal appearance shall begin on Wednesday, February 20, 2013, in accordance with Section 85.001(b), (c) of the Texas Election Code and shall end on Tuesday, February 26, 2013, in accordance with Section 85.001(a) of the Texas Election Code.

A copy of this order will be mailed immediately to the County Judge of Harris County, and all appropriate writs will be issued and all proper proceedings will be followed to the end that said special runoff election may be held to fill the vacancy in District No. 6 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 8th day of February, 2013.

Rick Perry, Governor

TRD-201300613

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1107-GA

Requestor:

Ms. Jo Anna Johnson

San Augustine County Auditor

100 West Columbia Street

San Augustine, Texas 75972

Re: Whether a commissioners' court may enter into an agreement authorizing the county to forward invoices for road construction to a third party, who then pays the county for the construction (RQ-1107-GA)

Briefs requested by March 8, 2013

RQ-1108-GA

Requestor:

The Honorable Allan B. Ritter

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768

Re: Whether Tax Code subsection 351.101(a)(5) authorizes the City of Galveston to use hotel occupancy tax revenue to fund a rehabilitation plan for Broadway Boulevard (RQ-1108-GA)

Briefs requested by March 13, 2013

RQ-1109-GA

Requestor:

The Honorable Glenn Hegar

Chair, Committee on Nominations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a Water Control and Improvement District may adopt and enforce rules regarding illegal dumping and weed control (RQ-1109-G)

Briefs requested by March 13, 2013

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201300603
Katherine Cary
General Counsel
Office of the Attorney General
Filed: February 12, 2013

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (Commission) proposes an amendment to §50.1 to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at $150 for each day during the regular session and any special session. Elsewhere in this issue of the *Texas Register,* the Commission contemporaneously withdraws the proposed amendment to §50.1 that appeared in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9730). Two proposals were considered by the Commission and the Commission voted not to adopt the legislative per diem of $179.

David A. Reisman, Executive Director, has determined that for each odd-numbered year of the first five years this rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering this rule.

Mr. Reisman also has determined that for each year of the first five years the amendment is in effect the public benefit expected as a result of adoption of the proposed rule is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

The amendment is proposed under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

§50.1. Legislative Per Diem.

(a) The legislative per diem is $150. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the $150 per diem for 2013 [~~2011~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300478
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.310, concerning Reimbursement Setting Methodology--Customized Power Wheelchairs and Associated Evaluations, and new §355.748, concerning Reimbursement Methodology for Preadmission Screening and Resident Review (PASRR) Level II Evaluations.

Background and Justification

The proposed changes to the PASRR program are a result of a Centers for Medicare and Medicaid Services (CMS) directive for the State to become fully compliant with federal requirements at Title 42 of the Code of Federal Regulations, Part 483, Subpart C, governing the State's responsibility for preadmission screening and resident review of individuals with mental illness (MI) or an intellectual or developmental disability (IDD). In order to com-

ply with the federal requirements, the Department of Aging and Disability Services has revised the PASRR Level II evaluation to determine if a person believed to have an MI or an IDD requires the level of care provided by a nursing facility (NF), and if so, whether they need specialized services for their MI or IDD.

HHSC proposes new §355.748, Reimbursement Methodology for Preadmission Screening and Resident Review (PASRR) Level II Evaluations, to describe the reimbursement methodology used to determine reimbursement rates for qualified providers conducting the evaluation to identify individuals eligible for PASRR services.

HHSC proposes to amend the title of §355.310, Reimbursement Setting Methodology--Customized Power Wheelchairs and Associated Evaluations, and to include the reimbursement methodology for customized adaptive aids in this rule to codify in rules current agency policies and procedures.

HHSC proposes to rename Chapter 355, Subchapter F, in order to replace "mental retardation" with "intellectual or developmental disability."

Section-by-Section Summary

The proposed new §355.748:

(a) identifies which providers are eligible for reimbursement;

(b) identifies the unit of service as 15 minutes;

(c)(1) describes the reimbursement methodology and references the program rule for PASRR Level II evaluations; and

(c)(2) describes additional rules applicable to the reimbursement methodology.

The proposed amendment to §355.310:

(1) changes the title of the rule to "Reimbursement Methodology for Customized Equipment;"

(2) corrects the titles of several cross references; and

(3) adds the reimbursement methodology for customized adaptive aids.

HHSC proposes to change the title of Subchapter F to "Reimbursement Methodology for Programs Serving Persons with Mental Illness or Intellectual or Developmental Disability."

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, and James Jenkins, Chief Financial Officer of the Department of Aging and Disabilities, have determined that, during the first five years the proposed rules are in effect, there will be a fiscal impact to the state government of $731,794 for state fiscal year (SFY) 2013; $1,863,137 for SFY 2014; $1,871,075 for SFY 2015; $1,879,386 for SFY 2016; $1,887,948 for SFY 2017; and $1,896,771 for SFY 2018. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Ms. Rymal and Mr. Jenkins anticipate there will be no economic cost to persons who are required to comply with the proposed amendment and new section during the first five years the rules will be in effect. There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

Ms. Rymal and Mr. Jenkins have also determined that there will be no adverse economic effect on small or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rules.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each of the first five years the rules are in effect, the expected public benefit is that the reimbursement methodologies for PASRR Level II evaluations and customized adaptive aids will be described in the Texas Administrative Code.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Yvonne Moorad, Senior Rate Analyst for Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to yvonne.moorad@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.310

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.310. Reimbursement [~~Setting~~] Methodology for Customized Equipment[~~--Customized Power Wheelchairs and Associated Evaluations~~].

(a) Reimbursement rates for customized power wheelchairs (CPWCs) and associated physical or occupational therapy evaluations provided under 40 TAC §19.2614 (relating to [~~Nursing~~ ~~Facility~~] Customized Power Wheelchairs) are determined as follows:

(1) For CPWCs, rates are determined in accordance with §355.8021(b) [~~(c)~~] of this title (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies).

(2) For evaluations required for CPWCs under 40 TAC §19.2614(c), rates are determined in accordance with §355.313 of this title (relating to Reimbursement Methodology for Rehabilitative and Specialized [~~and Rehabilitative~~] Services).

(b) Reimbursement rates for customized adaptive aids and associated physical or occupational therapy evaluations provided under 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review) are determined as follows:

(1) For customized adaptive aids, rates are determined in accordance with §355.8021(b) of this title.

(2) For evaluations required for customized adaptive aids, rates are determined in accordance with §355.313 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2013.

TRD-201300501
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 424-6900

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.748

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.748. Reimbursement Methodology for Preadmission Screening and Resident Review (PASRR) Level II Evaluations.

(a) Qualified providers. Payments are made to qualified providers delivering a Level II evaluation to determine if a person believed to have a mental illness (MI) or an intellectual or developmental disability (IDD) requires the level of care provided by a nursing facility (NF) and, if so, whether the person needs specialized services for their MI or IDD according to the program rules as defined in 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review).

(b) Unit of service. Qualified providers are reimbursed based on a 15-minute unit of service for a PASRR Level II evaluation.

(c) Reimbursement methodology.

(1) The Health and Human Services Commission determines the PASRR Level II evaluation rate based on the salary cost for a qualified provider and other statistical data on providers delivering similar services.

(2) The reimbursement methodology for a PASRR Level II evaluation is also governed by: §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2013.

TRD-201300500
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 424-6900

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners proposes amendments to §329.2, regarding Licensure by Examination. The amendments would require that a person register for the national exam through Texas to receive a license by examination and eliminate the possibility of applying for licensure by examination after having passed the exam as authorized by another state.

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments.

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be increased agency efficiency. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§329.2. License by Examination.

(a) Requirements. An applicant applying for licensure by examination must:

(1) meet the requirements as stated in §329.1 of this title (relating to General Licensure Requirements and Procedures); [~~and~~]

(2) register to take the national exam through this state, and have the first score report sent to this state; and

(3) [~~(2)~~] pass the National Physical Therapy Exam (NPTE) for physical therapists or physical therapist assistants with the score set by the board. Score reports must be sent directly to the board by the authorized score reporting service.

[~~(b) Applying for licensure in more than one state. An applicant who applies for licensure by exam in another state, but does not receive a license from any other state, may apply for licensure by exam in Texas. The applicant must meet all other requirements for licensure in Texas, and must have the score report sent directly to the board from the authorized score reporting service.~~]

(b) [~~(c)~~] Re-examination.

(1) First re-examination. An applicant who fails the exam the first time is eligible to take the examination a second time after submitting a re-exam application and fee.

(2) Second or subsequent re-examination. An applicant who fails the exam twice or more must complete additional education before taking the exam again. The amount of additional education is set forth in the attached chart. To be eligible to register for the exam again, the applicant must submit a letter that identifies the area(s) of weakness and describes the plan that addresses the weakness(s). The letter must be accompanied by proof that the additional education has been successfully completed. Additional education may be one or more of the following:

(A) A commercial review course.

(B) An individual tutorial. The completed tutorial must be signed by the tutor and notarized, and include the tutor's curriculum vitae. If the applicant is applying for a PT license, the tutor must be a licensed PT. If the applicant is applying for a PTA license, the tutor must be a licensed PT, or a licensed PTA who is associated with a Texas PTA program.

(C) Board-approved continuing competence (CCU) activities.

Figure: 22 TAC §329.2(b)(2)(C)

(3) A person who is currently licensed in good standing in another state and who must retake the national exam to meet Texas score requirements is not required to complete additional education.

(c) [~~(d)~~] Failure of PT exam. An applicant who fails the physical therapy examination may apply for licensure as a PTA and take the physical therapist assistant examination if he meets all other requirements for licensure.

(d) [~~(e)~~] Exam Accommodations. The board will provide reasonable accommodations for the national exam. An individual requesting special accommodations must submit the request to the board at least 30 days prior to the deadline for registering for the licensing examination. The board will process the accommodation request once all of the required information and documentation is received. The request includes the following forms:

(1) A completed Accommodations Request Form;

(2) A Professional Documentation of Disability Form, completed by a diagnostician meeting the board's requirements, which includes documentation of tests and measures used to diagnose the disability, and the results of those tests and measures;

(3) A completed Consent to Release Information Form; and

(4) The Academic Program Verification Form completed by the director of the academic program attended, if accommodations were granted by the PT or PTA program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2013.

TRD-201300448
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 305-6900

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CHAPTER 335. PROFESSIONAL TITLE

22 TAC §335.1

The Texas Board of Physical Therapy Examiners proposes amendments to §335.1, regarding Licensed Physical Therapist/Licensed Physical Therapist Assistant. The amendments would change the title of the rule to avoid confusion over the initials "LPT" and "LPTA," which are no longer used to designate a licensed physical therapist and licensed physical therapist.

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments.

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be clarification regarding the professional designation initials PTs and PTAs use to identify themselves. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§335.1. Use of Title [~~Licensed Physical Therapist/Licensed Physical Therapist Assistant~~].

(a) A licensed physical therapist shall use the title physical therapist or the initials PT. A licensed physical therapist assistant shall use the title physical therapist assistant or the initials PTA. No other titles or initials are conferred by a license from this board.

(b) Any letters designating other titles, academic degrees, or certifications must follow the initials PT or PTA (example: Jane Doe, PT, DPT).

(c) In using the title "doctor" as a trade or professional asset or on any manner of professional identification, including a sign, pamphlet, stationery, or letterhead, or as a part of a signature, a physical therapist shall designate the college or honorary degree that gives rise to the use of the title, or the authority under which the title is used.

(d) A degree described in subsection (b) of this section shall be granted by an institution accredited by an accrediting agency recognized by the National Commission on Accrediting or the US Department of Education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2013.

TRD-201300449
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 305-6900

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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.2, 821.4, 821.8, 821.10, 821.15, 821.30

The Texas Board of Orthotics and Prosthetics (board) proposes amendments to §§821.2, 821.4, 821.8, 821.10, and 821.15 and new §821.30, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

BACKGROUND AND PURPOSE

The proposed amendments modify the requirements for initial licensure for assistants and the scope of practice of licensed orthotic and prosthetic assistants. The proposed amendments also clarify prescriptions and their authorized sources in accordance with House Bill 2703, 82nd Legislature, 2011, Regular Session, which amended Occupations Code, Chapter 605, related to the regulation of orthotists and prosthetists, and specify the qualifications for uniquely qualified applicants.

The proposal also sets out new requirements and an associated fee for issuing criminal history evaluation letters, as required by House Bill 963, 81st Legislature, 2009, Regular Session, which amended Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, relating to the eligibility of certain applicants for occupational licenses.

SECTION-BY-SECTION SUMMARY

The amendment to §821.2 eliminates the definition of "assistant patient care service" from the orthotic and prosthetic assistant scope of practice; replaces the word "order" with "a written or electronic prescription" and modifies the authorized sources in accordance with House Bill 2703, 82nd Legislature, 2011, Regular Session, which amended Occupations Code, Chapter 605, related to the regulation of orthotists and prosthetists

The amendment to §821.4 establishes a $50 fee for the issuance of a criminal history evaluation letter.

The amendment to §821.8 specifies the experience requirements for uniquely qualified applicants who lack certain degrees.

The amendment to §821.10 eliminates the definition of "assistant patient care services" from the scope of practice for orthotic and prosthetic assistants and requires an associate's degree for initial licensure as an orthotic and prosthetic assistant.

The amendment to §821.15 prohibits contact with or solicitation of patients by facility personnel.

New §821.30 establishes the procedures for the issuance of criminal history evaluation letters as required by House Bill 963, 81st Legislature, 2009, which amended Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, relating to the eligibility of certain applicants for occupational licenses.

FISCAL NOTE

David Olvera, Executive Director, has determined that for each year of the first five years the proposed sections are in effect, there will be a fiscal impact to state government as a result of enforcing or administering the rules as proposed. There will be an increase in general revenue from persons requesting criminal history letters each year of the first five years the sections are in effect. Approximately four individuals are estimated to request criminal history letters at a fee of $50 for each letter annually. The annual revenue is projected to increase by $200. There is no fiscal implication to local governments as a result of the proposed sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Olvera has also determined that there will be no economic costs to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by in-

terpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is an anticipated economic cost of $50 to persons who are required to comply with the sections as proposed when requesting criminal history evaluation letters. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Olvera has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing and administering the sections is to effectively regulate the practice of orthotics and prosthetics in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed amendments and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to David Olvera, Executive Director, Texas Board of Orthotics and Prosthetics, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, TX 78714-9347 or by email to op@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amendments and new rule are authorized by Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The amendments and new rule affect Occupations Code, Chapter 605.

§821.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly suggests otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in this chapter:

(1) - (2) (No change.)

[~~(3) Assistant patient care service--Includes comprehensive patient care involving pedorthotics, shoe fitting, breast prosthesis and post-mastectomy services, and orthotic fitting as defined in the scopes of practice established by the American Board for Certification in Orthotics, Prosthetics and Pedorthics.~~]

(3) [~~(4)~~] Board--The Texas Board of Orthotics and Prosthetics.

(4) [~~(5)~~] CAAHEP--The Commission on Accreditation of Allied Health Education Programs.

(5) [~~(6)~~] Clinical residency for an assistant--An assistant-level experience of at least 1,000 hours directly supervised by a practitioner.

(6) [~~(7)~~] Clinical residency for a professional--A professional practitioner-level experience supervised by a practitioner in an accredited facility.

(7) [~~(8)~~] Clinical resident--A person who is completing a clinical residency for a professional or a clinical residency for an assistant.

(8) [~~(9)~~] Critical care events--Initial patient assessment, prescription development and recommendation, and final evaluation and critique of fit and function of the prosthesis or orthosis.

(9) [~~(10)~~] Custom-fabricated--A prosthesis or orthosis has been designed, prescribed, fabricated, fitted, and aligned specifically for an individual in accordance with sound biomechanical principles.

(10) [~~(11)~~] Custom-fitted--A prosthesis or orthosis prescribed, adjusted, fitted, and aligned for a specific individual according to sound biomechanical principles.

(11) [~~(12)~~] Department--Department of State Health Services.

(12) [~~(13)~~] Direct supervision--Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery. The supervising practitioner must review, and sign-off on patient care notes made by the clinical resident.

(13) [~~(14)~~] Extensive orthotic practice--Includes: the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthosis including plastic forming, metal contouring, cosmetic covering, upholstering and assembling; the fitting and critique of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the instructing of patients in the use and care of the orthosis; the maintaining of current encounter notes and patient records. The practitioner with extensive orthotic practice experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the orthoses listed below. At least two-thirds of the orthoses must be included: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(14) [~~(15)~~] Extensive prosthetic practice--Includes: the evaluation of patients with a wide range of upper and lower limb deficiencies, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and mea-

surements onto a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, upholstering, assembly, and aligning; the fitting and critique of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the instructing of patients in the use and care of the prosthesis; and the maintaining of current encounter notes and patient records. The practitioner with extensive prosthetic practice experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the prostheses listed below. At least two-thirds of the prostheses must be included: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(15) [~~(16)~~] Indirect supervision--Supervision provided to a clinical resident by a practitioner or licensed assistant, if the clinical residency is for an assistant who is available to provide on-site supervision within 60 minutes during the fitting and delivery process, and who will sign-off the resident's clinical records within ten working days. Indirect supervision is not appropriate for critical care events.

(16) [~~(17)~~] License--Includes a license, registration, certificate, accreditation, or other authorization issued under this Act to engage in an activity regulated under this Act.

(17) [~~(18)~~] Licensed orthotist (LO)--A person licensed under this Act who practices orthotics and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthosis," "orthoses," "orthotic," or a similar title or description of services.

(18) [~~(19)~~] Licensed orthotist assistant (LOA)--A person licensed under this Act who helps and is supervised at a prosthetic and/or orthotic facility by a licensed orthotist responsible for the assistant's acts.

(19) [~~(20)~~] Licensed physician--A physician licensed and in good standing with the Texas Medical Board.

(20) [~~(21)~~] Licensed prosthetist (LP)--A person licensed under this Act who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetics," "prosthetist," "prosthesis," "prostheses," "prosthetic," "artificial limbs," or a similar title or description of services.

(21) [~~(22)~~] Licensed prosthetist assistant (LPA)--A person licensed under this Act who helps and is supervised at a prosthetic and/or orthotic facility by a licensed prosthetist responsible for the assistant's acts.

(22) [~~(23)~~] Licensed prosthetist/orthotist (LPO)--A person licensed under this Act who practices both prosthetics and orthotics and represents the person to the public by a title or description of services that includes the terms "prosthetics/orthotics," "prosthetist/orthotist," "prosthetic/orthotic," "artificial limbs," "brace," "prosthesis," "prostheses," "orthosis," "orthoses," or a similar title or description of services.

(23) [~~(24)~~] Licensed prosthetist/orthotist assistant (LPOA)--A person licensed under this Act who assists and is supervised at a prosthetic and orthotic facility by a licensed prosthetist/orthotist or a licensed prosthetist and licensed orthotist responsible for the assistant's acts.

(24) [~~(25)~~] Licensee--Includes a person or facility holding a current license, registration or accreditation issued by the board, to engage in an activity regulated under this Act.

(25) [~~(26)~~] Orthosis--A custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, a truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(26) [~~(27)~~] Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.

(27) [~~(28)~~] Orthotics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under a written or electronic prescription [~~an order~~] from a licensed physician, chiropractor, [~~or~~] podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Occupations Code, Chapter 157, Subchapter B, and rules adopted by the Texas Medical Board for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(28) [~~(29)~~] Orthotist in charge--An orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the orthotic practice in the facility.

(29) [~~(30)~~] Person--An individual, corporation, partnership, association, or other organization.

(30) [~~(31)~~] Practitioner--A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(31) [~~(32)~~] Profession of prosthetics or orthotics--Allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Prosthetic and orthotic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(32) [~~(33)~~] Prosthesis--A custom-fabricated or fitted medical device that is not surgically implanted and is used to replace a missing limb, appendage, or other external human body part, including an artificial limb, hand, or foot. The term does not include an artificial eye, ear, finger, or toe, a dental appliance, a cosmetic device, including an artificial breast, eyelash, or wig, or other device that does not have a significant impact on the musculoskeletal functions of the body.

(33) [~~(34)~~] Prosthetics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under a written or electronic prescription [~~an order~~] from a licensed physician, chiropractor, [~~or~~] podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Occupations Code, Chapter 157, Subchapter B, and rules adopted by the Texas Medical Board.

(34) [~~(35)~~] Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

(35) [~~(36)~~] Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

(36) [~~(37)~~] Prosthetist in charge--A prosthetist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(37) [~~(38)~~] Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics and orthotics in the facility.

(38) [~~(39)~~] Registered orthotic technician--A person registered under this Act who fabricates, assembles, and services orthosis under the direction of a licensed orthotist, licensed prosthetist/orthotist, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(39) [~~(40)~~] Registered prosthetic technician--A person registered under this Act who fabricates, assembles, and services prostheses under the direction of a licensed prosthetist, licensed prosthetist/orthotist, licensed prosthetist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of a technician.

(40) [~~(41)~~] Registered prosthetic/orthotic technician--A person registered under this Act who fabricates, assembles, and services prostheses and orthosis under the direction of a licensed prosthetist, a licensed orthotist, a licensed prosthetist/orthotist, or a licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(41) [~~(42)~~] Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

(42) [~~(43)~~] Safety Manager--A licensee or registrant who is assigned to develop, carry out and monitor an accredited facility's safety program.

(43) [~~(44)~~] Voluntary charity care--The practice of a licensed orthotist and/or prosthetist without compensation or expectation of compensation.

§821.4. Fees.

(a) - (c) (No change.)

(d) Schedule of fees. The board has established the schedule of fees as follows:

(1) - (24) (No change.)

(25) retired voluntary charity care prosthetist/orthotist license renewal--$200; [~~and~~]

(26) prosthetist with orthotist assistant or orthotist with prosthetist assistant license renewal--$350; and[~~.~~]

(27) criminal history evaluation letter--$50.

(e) - (f) (No change.)

§821.8. Acquiring Licensure as a Uniquely Qualified Person.

(a) (No change.)

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is as qualified to perform prosthetic and/or orthotic care as those persons who obtain licensure pursuant to the Act, §605.252.

(1) - (2) (No change.)

(3) Applicants without a degree. A person applying for a single-profession license as a uniquely qualified person but who lacks [~~without~~] a degree for a single-profession license from a four-year [~~four year~~] college or university must possess 15 [~~obtain fifteen~~] years of extensive applicable orthotic and/or prosthetic critical care practice experience. The 15 years of experience shall be completed within 18 months of the application date, absent good cause for failure to meet the 18-month deadline. A person applying for a dual-profession license as a uniquely qualified person but who lacks a degree from a four-year college or university must possess 25 years of extensive applicable orthotic and prosthetic critical care practice experience. The 25 years of experience shall be completed within 18 months of the application date, absent good cause for failure to meet the 18-month deadline. Applicants for either a single or dual profession license shall [~~These applicants must~~] show proof of 45 [~~forty five~~] hours of relevant continuing education credit within the five years before the date of license application. The board shall [~~will~~] approve the experience and continuing education requirements before an applicant for either a single or dual profession license is granted exam eligible status. These applicants shall [~~must~~] pass the appropriate state exam outlined in §821.9(c) of this title (relating to Licensing by Examination).

(4) - (5) (No change.)

(c) - (e) (No change.)

§821.10. Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist Assistant.

(a) (No change.)

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services [~~and assistant patient care services~~] under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title (relating to Definitions), while under the immediate supervision of a practitioner licensed in the appropriate category. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed orthotist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(2) A licensed prosthetist assistant provides ancillary patient care services [~~and assistant patient care services~~] under the supervision of a licensed prosthetist or licensed prosthetist/orthotist. The supervising licensed prosthetist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed prosthetist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title, while under the immediate supervision of a practitioner licensed in the appropriate category. Other than as set forth in this subsection, the supervising licensed prosthetist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed prosthetist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(3) - (4) (No change.)

(c) Qualifications for licensure as an assistant. The applicant must submit evidence satisfactory to the board of having completed the following:

(1) successful completion of an associate's degree [~~coursework~~] from a college or university accredited by a regional accrediting organization such as the Southern Association of Schools and Colleges that included at a minimum:

(A) - (C) (No change.)

(2) (No change.)

(d) (No change.)

§821.15. Accreditation of Prosthetic and Orthotic Facilities.

(a) - (r) (No change.)

(s) Contact or solicitation by facility personnel. Individuals are prohibited from directly contacting or soliciting patients in regards to orthotic or prosthetic products, services, or other services provided by the facility of which they are employed or affiliated without a documented order or request, obtained prior to contact, from a licensed member of the patient's current healthcare treatment team.

§821.30. Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license (certificate, registration, permit, etc.) if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license (certificate, registration, permit, etc.) or is planning to take an examination for an initial license (certificate, registration, permit, etc.); and

(2) has reason to believe that the person is ineligible for the license (certificate, registration, permit, etc.) due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall complete and submit the request on a form prescribed by the department, accompanied by the criminal history evaluation fee.

(c) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The letter shall be issued not later than the 90th day after the date the department received the request.

(d) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300579
David Kercheval
Chair
Texas Board of Orthotics and Prosthetics
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 776-6972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.41

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §133.41, general and special hospitals, concerning Preadmission Screening and Resident Review (PASRR) and colored alert wrist bands to identify patient risks in hospitals.

The amendment will require that general and special hospitals, psychiatric hospitals, and crisis stabilization facilities undertake screening, prior to discharge, of all patients being considered for placement in a nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. The amendment explicitly adds to the State's regulatory scheme, the federal PASRR procedures which the Centers for Medicare and Medicaid Services (CMS) require.

The PASRR screening requirements are being added to §133.41(r) concerning quality assessment and performance improvement under the operational requirements for general and special hospitals; §134.41(m) of this title concerning quality assurance under the operational requirements for psychiatric hospitals; and §411.482(a) and §411.628(a) of this title concerning discharge planning as a standard of care and treatment at psychiatric hospitals and crisis stabilization facilities, respectively.

BACKGROUND AND PURPOSE

The purpose of the PASRR program is to ensure that placement of a patient in a nursing facility is necessary; to identify alternate placement options when applicable; and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. The requirements of the federal PASRR program are set forth at 42 Code of Federal Regulations (CFR) Part 483, Subpart C. To promote a clear, consistent implementation of this federal regulatory scheme in Texas, the Department of Aging and Disability Services (DADS), the agency primarily responsible for administering the federal PASRR Program in Texas, is promulgating new, detailed PASRR Program rules to which other state agencies, including the department, may refer. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the amendments described in this preamble, may be found at 40 TAC Chapter 17 and the existing PASRR rule at 40 TAC Chapter 19 is being repealed. Through promulgation of the four rule amendments described in this preamble, the department is requiring General Hospitals, Special Hospitals, Private Psychiatric Hospitals and Crisis Stabilization Units to comply with the PASRR requirements "in accordance with" the specific, applicable provisions of the new DADS' rules as well as the federal regulations.

The proposed amendment to §133.41(f)(6) is required for the implementation of Senate Bill 7, Article 5, 82nd Legislature, First Called Session, 2011, which added Health and Safety Code, §311.004, and requires the development of a statewide standardized patient risk identification system. The purpose of this system is to better enable hospital staff to readily identify patients with specific medical risks, such as drug allergies, using standardized, colored wrist bands. This system is consistent with, and based upon, the American Hospital Association's recommendations.

SECTION-BY-SECTION SUMMARY

The four rule amendments to §§133.41, 134.41, 411.482 and 411.628 of this title are nearly identical and require general, special, and psychiatric hospitals and crisis stabilization facilities to screen all patients who are being considered for discharge to a nursing facility, prior to discharge, to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility is required to contact and arrange for the local mental health authority to conduct an evaluation of the patient. These duties are to be carried out in accordance with both the federal and DADS' PASRR rules.

The proposed rule amendment to §133.41(f)(6) concerning the governing body is revised by adding subparagraphs (D), (E) and (F). The new language requires the governing body to ensure that specific colored alert wrist bands are utilized in hospitals as follows: red wrist bands for allergies; yellow wrist bands for fall risks; and purple wrist bands for do-not-resuscitate status. New language also allows the governing body to consider use of optional condition alert wrist bands as follows: green wrist bands for latex allergies and pink wrist bands for restricted extremity. In addition, new language requires the governing body to implement and enforce a policy and procedure regarding removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands. Section 133.41(f)(6)(B) and (C) is amended for punctuation clarification.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the section will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed because this was determined by interpretation of the rule that small business and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no economic cost to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack also has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The rule protects the health, safety, and welfare of patients receiving services in hospitals, personnel, and the public.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined as a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Cooper, Manager, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2835, Austin, Texas 78714-9347, (512) 834-6639 or by email to ellen.cooper@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Health and Safety Code, Chapters 241, 311, 577, and 1001; and Government Code, Chapter 531.

§133.41. Hospital Functions and Services.

(a) - (e) (No change.)

(f) Governing body.

(1) - (5) (No change.)

(6) Patient care. In accordance with hospital policy adopted, implemented and enforced, the governing body shall ensure that:

(A) (No change.)

(B) patients are admitted to the hospital only by members of the medical staff who have been grated admitting privileges; [~~and~~]

(C) a physician is on duty or on-call at all times;[~~.~~]

(D) specific colored condition alert wrist bands that have been standardized for all hospitals licensed under Health and Safety Code, Chapter 241, are used as follows:

(i) red wrist bands for allergies;

(ii) yellow wrist bands for fall risks; and

(iii) purple wrist bands for do not resuscitate status;

(E) the governing body shall consider the addition of the following optional condition alert wrist bands. This consideration must be documented in the minutes of the meeting of the governing body in which the discussion was held:

(i) green wrist bands for latex allergy; and

(ii) pink wrist bands for restricted extremity; and

(F) the governing body shall adopt, implement, and enforce a policy and procedure regarding the removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands.

(7) - (8) (No change.)

(g) - (q) (No change.)

(r) Quality assessment and performance improvement. The governing body shall ensure that there is an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care.

(1) - (2) (No change.)

(3) Medically-related patient care services. The hospital shall have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients. The hospital also shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Health and Safety Code, §533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(4) (No change.)

(s) - (y) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300510
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 776-6972

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CHAPTER 134. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §134.41

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §134.41, psychiatric hospitals, concerning Preadmission Screening and Resident Review (PASRR).

The amendment will require that general and special hospitals, psychiatric hospitals, and crisis stabilization facilities undertake screening, prior to discharge, of all patients being considered for placement in a nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. These amendments explicitly add to the State's regulatory scheme the federal PASRR procedures which the Centers for Medicare and Medicaid Services (CMS) require.

The PASRR screening requirements are being added to §133.41(r) of this title concerning quality assessment and performance improvement under the operational requirements for general and special hospitals; §134.41(m) concerning quality assurance under the operational requirements for psychiatric hospitals; and §411.482(a) and §411.628(a) of this title concerning discharge planning as a standard of care and treatment at psychiatric hospitals and crisis stabilization facilities, respectively.

BACKGROUND AND PURPOSE

The purpose of the PASRR program is to ensure that placement of a patient in a nursing facility is necessary; to identify alternate placement options when applicable; and to identify specialized

services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. The requirements of the federal PASRR program are set forth at 42 Code of Federal Regulations (CFR) Part 483, Subpart C. To promote a clear, consistent implementation of this federal regulatory scheme in Texas, the Department of Aging and Disability Services (DADS), the agency primarily responsible for administering the federal PASRR Program in Texas, is promulgating new, detailed PASRR Program rules to which other state agencies, including the department, may refer. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the amendments described in this preamble, may be found at 40 TAC Chapter 17 and the existing PASRR rule at 40 TAC Chapter 19 is being repealed. Through promulgation of the four rule amendments described in this preamble, the department is requiring General Hospitals, Special Hospitals, Private Psychiatric Hospitals and Crisis Stabilization Units to comply with the PASRR requirements "in accordance with" the specific, applicable provisions of the new DADS' rules as well as the federal regulations.

SECTION-BY-SECTION SUMMARY

The four rule amendments to §§133.41, 134.41, 411.482 and 411.628 of this title are nearly identical and require general, special, and psychiatric hospitals and crisis stabilization facilities to screen all patients who are being considered for discharge to a nursing facility, prior to discharge, to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility is required to contact and arrange for the local mental health authority to conduct an evaluation of the patient. These duties are to be carried out in accordance with both the federal and DADS' PASRR rules.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the section will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed because it was determined by interpretation of the rules that small business and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no economic cost to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack also has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The rule protects the health, safety, and welfare of patients receiving services in hospitals, personnel, and the public.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined as a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Cooper, Manager, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2835, Austin, Texas 78714-9347, (512) 834-6639 or by email to ellen.cooper@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Health and Safety Code, Chapters 241, 311, 577, and 1001; and Government Code, Chapter 531.

§134.41. Facility Functions and Services.

(a) - (l) (No change.)

(m) Quality assurance. The governing body shall ensure that there is an effective, ongoing, facility-wide, data-driven quality assurance (QA) program to evaluate the provision of patient care.

(1) - (2) (No change.)

(3) Discharge planning. The facility shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from facility. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the facility to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the facility and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to facility discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(n) - (p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300512
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 776-6972

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CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §411.482 and §411.628, psychiatric hospitals and crisis stabilization facilities, concerning Preadmission Screening and Resident Review (PASRR).

The amendments will require that general and special hospitals, psychiatric hospitals, and crisis stabilization facilities undertake screening, prior to discharge, of all patients being considered for placement in a nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. These amendments explicitly add to the State's regulatory scheme the federal PASRR procedures which the Centers for Medicare and Medicaid Services (CMS) require.

The PASRR screening requirements are being added to §133.41(r) of this title concerning quality assessment and performance improvement under the operational requirements for general and special hospitals; §134.41(m) of this title concerning quality assurance under the operational requirements for psychiatric hospitals; and §411.482(a) and §411.628(a) concerning discharge planning as a standard of care and treatment at psychiatric hospitals and crisis stabilization facilities, respectively.

BACKGROUND AND PURPOSE

The purpose of the PASRR program is to ensure that placement of a patient in a nursing facility is necessary; to identify alternate placement options when applicable; and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. The requirements of the federal PASRR program are set forth at 42 Code of Federal Regulations (CFR) Part 483, Subpart C. To promote a clear, consistent implementation of this federal regulatory scheme in Texas, the Department of Aging and Disability Services (DADS), the agency primarily responsible for administering the federal PASRR Program in Texas, is promulgating new, detailed PASRR Program rules to which other state agencies, including the department, may refer. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the amendments described in this preamble, may be found at 40 TAC Chapter 17 and the existing PASRR rule at 40 TAC Chapter 19 is being repealed. Through promulgation of the four rule amendments described in this preamble, the department is requiring General Hospitals, Special Hospitals, Private Psychiatric Hospitals and Crisis Stabilization Units to comply with the PASRR requirements "in accordance with" the specific, applicable provisions of the new DADS' rules as well as the federal regulations.

SECTION-BY-SECTION SUMMARY

The four rule amendments to §§133.41, 134.41, 411.482 and 411.628 of this title are nearly identical and require general, special, and psychiatric hospitals and crisis stabilization facilities to screen all patients who are being considered for discharge to a nursing facility, prior to discharge, to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility is required to contact and arrange for the local mental health authority to conduct an evaluation of the patient. These duties are to be carried out in accordance with both the federal and DADS' PASRR rules.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed because it was determined by interpretation of the rules that small business and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no economic cost to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack also has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The rules protect the health, safety, and welfare of patients receiving services in hospitals, personnel, and the public.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined as a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Cooper, Manager, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2835, Austin, Texas 78714-9347, (512) 834-6639 or by email to ellen.cooper@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER J. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS
DIVISION 5. DISCHARGE

25 TAC §411.482

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Health and Safety Code, Chapters 241, 311, 577, and 1001; and Government Code, Chapter 531.

§411.482. Discharge Planning.

(a) Involvement of staff, patient, and LAR in planning activities.

(1) - (2) (No change.)

(3) Discharge planning shall include, at a minimum, the following activities:

(A) (No change.)

(B) qualified staff members arranging for the services and supports recommended by the patient's IDT; [~~and~~]

(C) qualified staff members counseling the patient, the patient's LAR, and as appropriate, the patient's caregivers, to prepare them for post-discharge care; and[~~.~~]

(D) Preadmission Screening and Resident Review (PASRR) as required by paragraph (4) of this subsection.

(4) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility is necessary;

(B) to identify alternate placement options when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 776-6972

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SUBCHAPTER M. STANDARDS OF CARE AND TREATMENT IN CRISIS STABILIZATION UNITS
DIVISION 5. DISCHARGE

25 TAC §411.628

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals; §311.004, which requires the development of a standardized patient risk identification system; §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Health and Safety Code, Chapters 241, 311, 577, and 1001; and Government Code, Chapter 531.

§411.628. Discharge Planning.

(a) Involvement of staff, patient, and LAR in planning activities.

(1) - (2) (No change.)

(3) Discharge planning shall include, at a minimum, the following activities:

(A) (No change.)

(B) qualified staff members arranging for the recommended services and supports; [~~and~~]

(C) Preadmission Screening and Resident Review (PASRR) as required by paragraph (4) of this subsection; and

(D) [~~(C)~~] qualified staff members counseling the patient, the patient's LAR, and as appropriate, the patient's caregivers, to prepare them for post-discharge care.

(4) Screening and evaluation before patient discharge from the CSU. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the CSU to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the CSU and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the CSU shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to CSU discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility is necessary;

(B) to identify alternate placement options when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 776-6972

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CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES
SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE
DIVISION 5. DISCHARGE AND ATP FROM SMHF

25 TAC §412.202

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §412.202, concerning the Mental Health Services--Admissions, Continuity, and Discharge.

BACKGROUND AND PURPOSE

In accordance with 42 Code of Federal Regulations Part 483, Subpart C, concerning Preadmission Screening and Resident Review (PASRR), the amended section sets forth the requirements for state mental health facilities (SMHFs) and local mental health authorities (LMHAs) to perform PASRR screenings and evaluations of patients who are being considered for nursing home placement upon discharge.

The purpose of PASRR is to ensure that placement of the patient in a nursing facility is necessary, to identify alternate placement options when applicable, and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. To promote a clear, consistent implementation of the PASRR Program, the Department of Aging and Disability Services (DADS), who is designated with the responsibility for administering the PASRR Program in Texas, is promulgating PASRR Program rules to which LMHAs and SMHFs must comply. The department is amending an applicable rule in Chapter 412, Subchapter D, Division 5, §412.202, concerning admission, continuity, and discharge, to require that LMHAs and SMHFs comply with federal regulations and the rules in 40 TAC Chapter 17, concerning substantially the

same matter. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the amendment in this preamble and repeal of the department's rules in Chapter 415, Subchapter J, may be found at 40 TAC Chapter 17. The existing DADS' PASRR rule at 40 TAC Chapter 19, Subchapter Z is being repealed.

The department rules in Chapter 415, Subchapter J, concerning PASARR are being repealed because they are no longer necessary.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 412.202 has been reviewed and the department has determined that the reasons for adopting the rule continue to exist.

SECTION-BY-SECTION SUMMARY

Amendments to §412.202(b) cite the federal PASRR regulations; set forth the basic requirements for LMHAs and SMHFs in the conduct of preadmission screenings, evaluations, and resident reviews; and require compliance with federal regulations and DADS rules concerning PASRR in 40 TAC Chapter 17. Also, amendments to subsection (b)(5)(D) correct the legacy agency name from the "Texas Department of Human Services (TDHS)" to the "Department of Aging and Disability Services."

FISCAL NOTE

Mike Maples, Assistant Commissioner, Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed rule will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

The rule has direct application only to local mental health authorities and state mental health facilities, neither of which meet the definition of small or micro-business under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no economic cost to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mr. Maples has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is that individuals are appropriately discharged to the least restrictive setting that meets their needs and, if a nursing facility is determined the least restrictive setting, ensure that individuals receive appropriate specialized services to address their diagnosis of mental illness, intellectual disability, or developmental disability.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined as a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Janet Fletcher, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, Mail Code 2018/552 or by email to mhsarules@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055(e), and Health and Safety Code, Chapter 35 and §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Government Code, Chapter 531, and Health and Safety Code, Chapters 35 and 1001. The review of the rules implement Government Code, §2001.039.

§412.202. Special Considerations.

(a) (No change.)

(b) Preadmission Screening and Evaluation (PASRR). As described in 42 Code of Federal Regulations Part 483, Subpart C, all patients who are being considered for nursing home placement shall be screened prior to nursing facility admission. The purpose of the PASRR Level I Screening and PASRR Level II Evaluation is:

(1) to ensure that placement of the patient in a nursing facility is necessary;

(2) to identify alternate placement options when applicable; and

(3) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(A) PASRR Level I Screening. The SMHF shall complete, and may collaborate with a nursing facility, a PASRR Level I Screening in accordance with the rules of the Department of Aging

and Disability Services (DADS) set forth in the 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)).

(B) PASRR Level II Evaluation. If the PASRR Level I Screening indicates that the patient might have a mental illness, intellectual disability, or developmental disability, the SMHF shall arrange with LMHA who shall conduct a PASRR Level II Evaluation in accordance with 40 TAC Chapter 17.

(C) Resident Review. The LMHA shall conduct PASRR Level II Evaluations as part of the resident review process required by 40 TAC Chapter 17.

[~~(b) Nursing facilities.~~]

[~~(1) Information regarding alternate services and supports. Prior to a person being admitted to a nursing facility on absence for trial placement (ATP) or directly after discharge, the designated LMHA shall provide the person, the person's LAR, and, unless the LAR is a family member, at least one family member of the person, if possible, with information about alternative services and supports for which the person may be eligible.~~]

[~~(2) Preadmission screening. Prior to a person being admitted to a nursing facility on ATP or directly after discharge, the SMHF shall contact the Texas Department of Human Services to conduct a preadmission screening as required by 40 TAC §19.2500 (relating to Preadmission Screening and Resident Review (PASARR)).~~]

(4) [~~(3)~~] ATP. If a patient is admitted to a nursing facility on ATP, then the designated LMHA shall conduct and document, including justification for its recommendations, the activities described in this paragraph.

(A) The designated LMHA shall make at least one face-to-face contact with the patient at the nursing facility. The contact shall include:

(i) a review of the patient's medical record at the nursing facility; and

(ii) discussions with the patient and LAR, if any, the nursing facility staff, and other staff who provide care to the patient regarding:

(I) the needs of the patient and the care he/she is receiving;

(II) the ability of the nursing facility to provide the appropriate care;

(III) the provision of mental health services, if needed by the patient; and

(IV) the patient's adjustment to the nursing facility.

(B) Before the end of the initial ATP period as described in §412.206(b)(2) of this title (relating to Absence for Trial Placement (ATP)), the designated LMHA shall recommend to the SMHF one of the following:

(i) discharging the patient if the LMHA determines that:

(I) the nursing facility is capable of providing, and willing to provide, appropriate care to the patient after discharge;

(II) any mental health services needed by the patient are being provided to the patient while he/she is residing in the nursing facility; and

(III) the patient and LAR, if any, agrees to the nursing facility placement;

(ii) extending the patient's ATP period in accordance with §412.206(b)(3) of this title;

(iii) returning the patient to the SMHF in accordance with §412.205(b)(2) of this title (relating to Absences From a SMHF); or

(iv) initiating involuntary admission to the SMHF in accordance with §412.205(a)(2) of this title.

(5) [~~(4)~~] Discharge. If a person is admitted to a nursing facility directly upon discharge, then the designated LMHA shall conduct and document the activities described in this paragraph.

(A) The designated LMHA shall make face-to-face contact with the person at the nursing facility within seven days after discharge to determine if the nursing facility is providing adequate and appropriate care to the person. The contact shall include:

(i) a review of the person's medical record at the nursing facility; and

(ii) discussions with the person, or the person's LAR, if any, the nursing facility staff, and other staff who provide care to the person regarding:

(I) the needs of the person and the care he/she is receiving;

(II) the ability of the nursing facility to provide the appropriate care;

(III) the delivery of mental health services, if needed by the person; and

(IV) the person's adjustment to the nursing facility.

(B) If the designated LMHA determines from its contact that the nursing facility is not providing adequate and appropriate care to the person, then the LMHA shall make a reasonable effort to encourage the nursing facility to provide adequate and appropriate care.

(C) If the designated LMHA's efforts to encourage the nursing facility to provide adequate and appropriate care are unsuccessful and the LMHA determines that the nursing facility is unable or unwilling to provide adequate and appropriate care, then the LMHA shall:

(i) make recommendations to the person and the person's LAR, if any, regarding alternate residential placement; and

(ii) provide assistance in accessing alternate placement, if requested by the person or LAR to do so.

(D) If the designated LMHA identifies or suspects any instance of mistreatment, abuse or neglect, or injuries of unknown origin at the nursing facility, then the LMHA shall make a report to the Department of Aging and Disability Services [~~Texas Department of Human Services (TDHS)~~] via its complaint hotline (1-800-458-9858).

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300507
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 776-6972

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CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

SUBCHAPTER J. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)--MENTAL HEALTH SERVICES

25 TAC §§415.451 - 415.458

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§415.451 - 415.458, concerning Preadmission Screening and Resident Review (PASARR).

BACKGROUND AND PURPOSE

In accordance with 42 Code of Federal Regulations Part 483, Subpart C, concerning Preadmission Screening and Resident Review (PASRR), the amended section sets forth the requirements for state mental health facilities (SMHFs) and local mental health authorities (LMHAs) to perform PASRR screenings and evaluations of patients who are being considered for nursing home placement upon discharge.

The purpose of PASRR is to ensure that placement of the patient in a nursing facility is necessary, to identify alternate placement options when applicable, and to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability. To promote a clear, consistent implementation of the PASRR Program, the Department of Aging and Disability Services (DADS), who is designated with the responsibility for administering the PASRR Program in Texas, is promulgating PASRR Program rules to which LMHAs and SMHFs must comply. The department is amending an applicable rule in Chapter 412, Subchapter D, Division 5, §412.202, concerning admission, continuity, and discharge to require that LMHAs and SMHFs comply with federal regulations and the rules in 40 TAC Chapter 17, concerning substantially the same matter. DADS' new PASRR rules, which are being published in the same issue of the *Texas Register* as the repeals in this preamble and the amendment of the department's rule §412.202, may be found at 40 TAC Chapter 17. The existing DADS' PASRR rule at 40 TAC Chapter 19, Subchapter Z is being repealed.

The department rules in Chapter 415, Subchapter J, concerning PASARR are being repealed because they are no longer necessary.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 415.451 - 415.458 have been reviewed and are no longer necessary and are being repealed.

SECTION-BY-SECTION SUMMARY

Sections 415.451 - 415.458 concerning PASARR are being repealed because the PASRR Program requirements will be addressed in new DADS rules in 40 TAC Chapter 17.

FISCAL NOTE

Mike Maples, Assistant Commissioner, Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the repeals will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the repeals as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed repeals will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the repeals as proposed.

The rules have direct application only to local mental health authorities and state mental health facilities, neither of which meet the definition of small or micro-business under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no economic cost to persons who are required to comply with the repeals as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mr. Maples has also determined that for each year of the first five years the repeals are in effect, the public will benefit from adoption of the repeals. The public benefit anticipated as a result of enforcing or administering the repeals is that individuals are appropriately discharged to the least restrictive setting that meets their needs and, if a nursing facility is determined the least restrictive setting, ensure that individuals receive appropriate specialized services to address their diagnosis of mental illness, intellectual disability, or developmental disability.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined as a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and,

therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Janet Fletcher, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, Mail Code 2018/552 or by email to mhsarules@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeals have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055(e), and Health and Safety Code, Chapter 35 and §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals affect Government Code, Chapter 531, and Health and Safety Code, Chapters 35 and 1001. The review of the rules implements Government Code, §2001.039.

§415.451. Purpose.

§415.452. Application.

§415.453. Definitions.

§415.454. PASARR Determination Process.

§415.455. Provision of Specialized Services and Alternate Placement Services.

§415.456. Assistance for Applicants Denied Nursing Facility Admission.

§415.457. References.

§415.458. Distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300509
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 776-6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department proposes the repeal of §§57.122, 57.399, and 57.920; amendments to §§57.111 - 57.114, 57.116 - 57.119, 57.125, 57.126, 57.131, 57.132, 57.136, 57.251, 57.253, 57.257, 57.377, 57.378, 57.380 - 57.382, 57.391, 57.392, 57.394, 57.395, 57.397, 57.691, 57.930, and 57.932; and new §§57.122, 57.371, and 57.399, concerning Chapter 57, Fisheries. The proposed repeals, amendments and new sections are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Subchapter A. Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants

The proposed amendment to §57.111, concerning Definitions, would update the scientific names of organisms regulated under Subchapter A and alter punctuation to make taxonomic references clearer. From time to time the scientific community reclassifies an organism in light of consensus and/or emerging science. The proposed amendment consists solely of changes to reflect the current taxonomic status of various organisms.

The proposed amendment to §57.112, concerning General Rules, would combine subsections (b) and (c) into a single subsection for ease of reference.

The proposed amendment to §57.113, concerning Exceptions, would delete the language referencing "the permittee's private facilities" in subsection (a), alter subsection (b) to add "beheaded" as an acceptable predicate for the possession of exotic harmful or potentially harmful fish or shellfish without a permit, replace the word "harvested" with the word "taken" in subsection (c), add new subsections (d) and (e) to clarify the conditions under which triploid grass carp lawfully may be taken, and alter current subsection (l) to clarify the applicability of the provision. The change in subsection (a) is for the purpose of eliminating unnecessary language. The change to subsection (b) is necessary because the intent of the provision is to establish a condition under which the inability of an organism to cause harm is a physiological certainty. The change to subsection (c) is necessary because "take" has a specific meaning as defined in Parks and Wildlife Code, §1.001, while "harvest" is not defined. New subsections (d) and (e) are necessary because the current rule does not address the removal of grass carp from private waters or the removal of grass carp from public waters following either the attainment of the management goal of the stocking or the expiration of the permit under which a stocking has taken place. The department issues permits for the stocking of public and private waters with triploid grass carp to control undesirable aquatic vegetation. Triploid grass carp cannot reproduce, but they can negatively affect ecological systems in places where they should not be stocked. Therefore, the current rules require that all grass carp removed from stocked areas be gutted or beheaded in order to prevent the accidental or intentional introduction to unsuitable environments. The two new subsections articulate specific circumstances under which it is lawful to possess grass carp without a permit. The proposed amendment to current subsection (l) clarifies that the department's conditions for the removal and disposal of exotic species are not restricted solely to exotic species removed by mechanical harvesting. The proposed amendment also alters current subsection (j)(2)

to replace a capital letter with a lowercase letter in order to preserve parallel construction.

The proposed amendment to §57.114, concerning Health Certification of Harmful or Potentially Harmful Exotic Shellfish, would insert hyphens into compound phrases in subsections (a), (d), (f), and (g) to create grammatically correct adjectival phrases.

The proposed amendment to §57.116, concerning Exotic Species Transport Invoice, would remove a reference to the Exotic Species Program Leader in the notification requirements set forth in subsection (b). The referenced job title is an artifact and no longer exists.

The proposed amendment to §57.117, concerning Exotic Species Permit: Application Requirements, alters subsection (a) to insert a hyphen into a compound phrase to create a grammatically correct adjectival phrase.

The proposed amendment to §57.118, concerning Exotic Species Permit Issuance, would insert hyphens into compound phrases in subsection (a) to create grammatically correct adjectival phrases.

The proposed amendment to §57.119, concerning Exotic Species Permit: Requirements for Permits, would alter subsection (a) to delete "authorized" as being unnecessary in reference to department personnel, alter subsections (c) and (l) to remove references to the Exotic Species Program Leader, for the reason set forth in the discussion of the proposed amendment to §57.116, and would eliminate references to "private facility" and "aquaculture" in subsections (h), (k), and (l) because the nature of ownership of a facility is immaterial to the provisions governing the release or escape of harmful or potentially harmful exotic species and because the provisions apply to any facility for which a permit has been issued and not solely to aquaculture facilities.

The proposed repeal of §57.122 and proposed new §57.122, concerning Permit Denial Review, would set forth the procedure for an applicant for a permit to request a review of a decision of the department to refuse issuance of a permit or permit renewal.

The proposed amendment to §57.125, concerning Triploid Grass Carp Permit; Application, Fee, would replace the phrase "authorized employees" with the phrase "an employee," because an inspection cannot be conducted by anyone other than an employee authorized to conduct inspections and is thus redundant.

The proposed amendment to §57.126, concerning Triploid Grass Carp Permit; Terms of Issuance, would clarify that the provisions of subsection (a) apply to subsequent stockings of triploid grass carp as well as to initial stockings. The proposed amendment also would remove subsection (a)(6) and (7) and insert the phrase "and objectives" into subsection (a)(5). The effect of the proposed amendment is to consolidate the practical effect of three paragraphs in a single paragraph.

The proposed amendment to §57.131, concerning Exotic Species Interstate Transport Permit: Application and Issuance, and §57.132, concerning Exotic Species Interstate Transport Permit: Permittee Requirements, would eliminate references to Exotic Species Program Leader for the reason set forth in the discussion of the proposed amendment to §57.116.

The proposed amendment to §57.136, concerning Special Provisions--Water Spinach, would alter subsection (c)(5) to clarify provisions governing the nature of buffer zones surrounding areas where water spinach is cultured, handled, packed, processed, stored, shipped, or disposed of under a permit issued by the department. Under current rule, a buffer area of at least 10 feet in width and devoid of all vegetation must be maintained around the perimeter of all areas where water spinach is cultured, handled, packed, processed, stored, shipped, or disposed of. The department has discovered that there are some permittees for whom this provision is problematic given the location of mature trees. The department has determined that the provision can be modified with no diminution of its effectiveness in preventing the accidental release or spread of water spinach. The proposed amendment therefore would allow mature woody vegetation within the buffer zone and would allow the department to allow less than 10 feet of buffer for greenhouses built before 2009, when the current rules governing possession and culture of water spinach were promulgated.

Subchapter C. Introduction of Fish, Shellfish and Aquatic Plants

The proposed amendment to §57.251, concerning Definitions, would clarify the definition of "native species" by noting that the current definition includes species native to the Texas Territorial Sea and federal waters within the Exclusive Economic Zone. The Texas Territorial Sea is those waters from the coastline to nine nautical miles offshore. The Exclusive Economic Zone is the federal waters that begin at nine nautical miles from the coastline and extend to international waters.

The proposed amendment to §57.253, concerning Permit Application, would alter subsection (f)(3) to update the title of one of the department employees who serve on the review panel established by the section.

The proposed amendment to §57.257, concerning Reporting and Recordkeeping, would eliminate "acting within the scope of official duties" as unnecessary and redundant.

Subchapter D. Commercially Protected Finfish

Proposed new §57.371, concerning Applicability: Commercially Protected Finfish, would recapitulate statutory provisions in rule for ease of reference. The species listed in the proposed new section are classified as protected fish under Parks and Wildlife Code, §66.020, which also makes it unlawful for any person to buy, offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, barter, or exchange those species. Additionally, the proposed new rule would stipulate that in order to be lawfully imported, certain species of protected finfish can only be imported by the holder of a finfish import license and must be farm raised and fed a prepared feed containing 20% or more of plant protein or grain by-products as a primary food source. Parks and Wildlife Code, §66.020(b)(3) allows the lawful importation by the holder of a Texas finfish import license of bass of the genus Micropterus, crappie, flathead catfish, red drum, striped bass, white bass or a hybrid of any of these fish, provided they have been "continuously fed a prepared feed as a primary food source." "Prepared feed" is defined by Parks and Wildlife Code, §66.001(2) as "a pelleted ration, 20 percent of more of which consists of plant protein or grain by-products."

Subchapter E. Permits to Sell Nongame Fish Taken from Public Fresh Water

The proposed amendment to §57.377, concerning Definitions, would update citations of regulations in other parts of the Texas Administrative Code that have been redesignated by previous rule action.

The proposed amendment to §57.378, concerning Applicability: Nongame Fishes, would update the scientific names of two species and eliminate a reference to a species that is extremely rare in Texas and therefore is not commercially valuable.

The proposed amendment to §57.380, concerning Permit Application, would eliminate the requirement that an application for a permit to sell nongame fish taken from public fresh water be notarized. Notarization is not necessary as a means to certify that information is accurate because falsification of a government record is an offense under Penal Code, §37.10. Therefore, the current requirement is unnecessary.

The proposed amendment to §57.381, concerning Permit Specifications and Requirements, would alter the requirements of subsection (a)(2) to replace the term "location" with the term "water body" and eliminate the term "time." The proposed amendment would also delete subsection (a)(4) regarding the specification of the number of nongame fish. The current rule stipulates that the department, when issuing a permit to sell nongame fish taken from public fresh water, shall specify the "location and time" where the activity is permitted. The department has determined that it is more precise to indicate the water body where activity is permitted rather than the place and to eliminate the time requirement, because the department specifies the duration of permit validity and is not concerned as to the time of day when activities are conducted under a permit. Also, the department has determined that there is no need to specify the number of nongame fish for which take and sale is allowed.

The proposed amendment to §57.382, concerning Harvest and Sales Reports, would require annual harvest and sales reports to be submitted to the department on or before the 10th day of January each year. Under current rule, annual harvest and sales reports are due by the 10th day of December each year. The department has determined that because the permits expire in January, requiring the report to be submitted in December results in potentially inaccurate reporting, since the reports must be submitted before the period of validity of the permit expires.

Subchapter F. Collection of Broodfish from Texas Waters

The proposed amendments to §57.391, concerning Definitions, and §57.392, concerning General Rules, would replace the term "sportfishing" with the term "recreational fishing." The department does not use the term "sportfishing" in any context other than the saltwater sportfishing stamp, which is the name established by statute for that tag. In all other contexts, the department utilizes the term "recreational" to refer to noncommercial angling.

The proposed amendment to §57.394, concerning Broodfish Collection; Notification, would replace the term "aquaculture coordinator" with the term "coastal or inland regional fisheries office." The department does not employ an aquaculture coordinator and has determined that it is more efficient to have permittees notify the nearest fisheries office in addition to the nearest law enforcement office.

The proposed amendment to §57.395, concerning Broodfish Permits; Fees, Terms of Issuance, would eliminate subsection (e)(3) which duplicates fee information located in 31 TAC Chapter 53.

The proposed amendment to §57.397, concerning Broodfish Permit; Revocation, would replace the term "sportfishing" with the term "recreational fishing" for the reason discussed in the proposed amendments to §57.391 and §57.392 and eliminates a reference to the saltwater stamp, which can no longer be purchased separately from a fishing license.

The proposed repeal of §57.399 and proposed new §57.399, concerning Permit Denial Review, would set forth the procedure for an applicant for a permit to request a review of a decision of the department to refuse issuance of a permit or permit renewal.

Subchapter H. Fishery Management Plans

The proposed amendment to §57.691, concerning Fishery Management Plans, would list fisheries management plans that were inadvertently not included in the section. The proposed amendment is necessary for accuracy and ease of reference.

Subchapter K. Scientific Areas

The proposed repeal of §57.920, concerning Nine-Mile Hole State Scientific Area, is necessary because the section's effectiveness ceased on its own terms on June 30, 2005.

Subchapter L. Aquatic Vegetation Management

The proposed amendment to §57.930, concerning Definitions, would define "NPDES" as National Pollutant Discharge Elimination System. The NPDES Permit Program is administered by the Environmental Protection Agency (EPA) under the Clean Water Act. The proposed amendment is self-explanatory.

The proposed amendment to §57.932, concerning State Aquatic Vegetation Plan, makes changes necessary to allow the department to react with greater quickness when infestations of exotic aquatic plants are discovered.

Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Kurzawski also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clearer, more easily understood rules that enhance compliance and enforcement.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rules for the most part make nonsubstantive changes and because the substantive changes that are made do not affect small or micro-businesses, the department has determined that the proposal will not impose any direct adverse economic effects on small businesses or microbusinesses. Accordingly, the de-

partment has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Ken Kurzawski, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4591 (e-mail: ken.kurzawski@tpwd.state.tx.us).

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §§57.111 - 57.114, 57.116 - 57.119, 57.122, 57.125, 57.126, 57.131, 57.132, 57.136

The amendments and new section are proposed under the authority of Parks and Wildlife Code, §66.007 and §66.0072, which require the commission to make rules to carry out those sections.

The proposed amendments and new section affect Parks and Wildlife Code, Chapter 66.

§57.111. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Beheaded--The complete detachment of the head (that portion of the fish from the gills to the nose; that portion of the shrimp called the carapace) from the body.

(6) (No change.)

(7) Cultured species--Aquatic plants, fish, or shellfish [~~or wildlife resources~~] raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

(8) - (12) (No change.)

(13) Exotic species--A nonindigenous aquatic plant, fish, or shellfish [~~plant or wildlife resource~~] not normally found in public water of this state.

[~~(14) Grass carp--The species Ctenopharyngodon idella.~~]

(14) [~~(15)~~] Gutted--The complete removal of all internal organs and entrails.

(15) [~~(16)~~] Harmful or potentially harmful exotic fish--

(A) Lampreys: Family[~~:~~] Petromyzontidae--all species except Ichthyomyzon castaneus and I. gagei;

(B) Freshwater Stingrays: Family[~~:~~] Potamotrygonidae--all species;

(C) Arapaima: Family[~~:~~] Arapaimidae--Arapaima gigas;

(D) South American Pike Characoids: Family[~~:~~] Acestrorhynchidae--all species of genus Acestrorhynchus;

(E) African Tiger Fishes: [~~Family,~~] Family Alestidae--all species of genus Hydrocynus;

(F) Piranhas: Family Characidae (Subfamily Serrasalminae)--all species of the genera Catoprion, Pristobrycon, Pygocentrus, Pygopristis, and Serrasalmus; [~~Piranhas and Pirambebas: Family Characidae--all species of the genus Piaractus;~~]

(G) Dogtooth characins (Payara and vampire tetras): Family Cynodontidae [~~Payara and other wolf or vampire tetras: Dogtooth characins, Family Cynodontidae~~]--all species of genera Hydrolycus, Rhaphiodon, and Cynodon;

(H) Dourados: Family Characidae (Subfamily Salmininae) [~~Dourados: Family Characidae, Subfamily: Incertae sedis~~]--all species of genus Salminus;

(I) South American Tiger Fishes: Family[~~:~~] Erythrinidae--all species;

(J) South American Pike Characids: Family[~~:~~] Ctenoluciidae--all species of genera Ctenolucius and Boulengerella;

(K) African Pike and Lute Fishes: Families Hepsetidae and Citharinidae [~~African Pike Characoids-Families: Hepsetidae, and Citharinidae~~]--all species;

(L) Electric Eels: Family[~~:~~] Gymnotidae--Electrophorus electricus;

(M) Carps and Minnows: Family[~~:~~] Cyprinidae--all species and hybrids of species of genera: Aspius, Pseudaspius, and Aspiolucius (Asps); Abramis, Blicca, Megalobrama, and Parabramis (Old World Breams); Hypophthalmichthys [~~or Aristichthys~~] (Bighead and Silver Carp); Mylopharyngodon (Black Carp); Ctenopharyngodon (Grass Carp); Cirrhinus [~~(Mud Carp)~~]; Thynnichthys [~~(Sandkhol Carp)~~]; Gibelion (Catla); Leuciscus (Eurasian [~~Old World Chubs, Ide, Orfe,~~] Daces); Tor, and Neolissochilus hexagonolepsis (Barbs and Mahseers); Rutilus (Roaches); Scardinius (Rudds); Elopichthys (Yellowcheek); Catlocarpio (Giant Barb [~~Siamese Carp~~]); all species of the genus Labeo [~~(Labeos)~~]) except Labeo chrysophekadion (Black Sharkminnow [~~SharkMinnow~~]);

(N) Walking Catfishes: Family[~~:~~] Clariidae--all species;

(O) Electric Catfishes: Family[~~:~~] Malapteruridae--all species;

(P) South American Parasitic Candiru Catfishes: Family[~~:~~] Trichomycteridae--all species;

(Q) Pike Killifish: Family[~~:~~] Poeciliidae--Belonesox belizanus;

(R) Marine Stonefishes: Family[~~:~~] Synanceiidae--all species;

(S) Tilapia: Family[~~:~~] Cichlidae--all species of genera Tilapia, Oreochromis and Sarotherodon;

(T) Asian Pikeheads: Family[~~:~~] Osphronemidae--all species of the genus Luciocephalus;

(U) Snakeheads: Family[~~:~~] Channidae--all species;

(V) Perch: Family Percidae [~~Old World Pike-Perches Family: Percidae~~]--all species of the genus Sander except Sander canadensis and S. vitreus and hybrids between these two species and all species of genus Gymnocephalus;

(W) Nile Perch: Family[~~: Family~~] Latidae--all species of genus Lates;

(X) Seatrouts and Corvinas: Family[:] Sciaenidae--all species of genus Cynoscion except Cynoscion arenarius, C. nebulosus, and C. nothus [~~nebulosus, C. nothus, and C. arenarius~~];

(Y) Whale Catfishes: Family[:] Cetopsidae--all species;

[~~(Z) Ruffe Family: Percidae--all species of genus Gymnocephalus;~~]

(Z) [~~(AA)~~] Airsac [~~Air sac~~] Catfishes: Family[:] Heteropneustidae--all species;

(AA) [~~(BB)~~] Swamp Eels, Rice Eels, or One-Gilled Eels: Family Synbranchidae [~~Swamp Eels, Rice Eels or One-Gilled Eel Family: Synbranchidae~~]--all species;

(BB) [~~(CC)~~] Freshwater Eels: Family Anguillidae--all species except Anguilla rostrata;

(CC) [~~(DD)~~] Round Gobies: Family[:] Gobiidae--all species of genus Neogobius;

(DD) [~~(EE)~~] Temperate Basses: Family[:] Moronidae--all species except Morone chrysops, M. mississippiensis, and M. saxatilis [~~for Morone saxatilis, M. chrysops and M. mississippiensis~~] and hybrids of [~~between~~] these [~~three~~] species; and

(EE) [~~(FF)~~] Temperate Perches: Family[:] Percichthyidae--all species.

(16) [~~(17)~~]) Harmful or potentially harmful exotic shellfish--

(A) Crayfishes: Family[:] Parastacidae--all species;

(B) Mitten Crabs: [~~crabs~~] Family[:] Varunidae--all species of genus Eriocheir;

(C) Zebra Mussels: Family[:] Dreissenidae--all species of genus Dreissena;

(D) Penaeid Shrimp: Family[:] Penaeidae--all species of genera Penaeus, Litopenaeus, Farfantepenaeus, Fenneropenaeus, Marsupenaeus, and Melicertus [~~(all previously considered Penaeus)~~] except Litopenaeus [~~L.~~] setiferus, Farfantepenaeus [~~F.~~] aztecus and F. duorarum;

(E) Oysters: [~~Oyster~~] Family[:] Ostreidae--all species except Crassostrea virginica and Ostrea equestris; and[.]

(F) Applesnails and Giant Rams-Horn Snails: Family Ampullariidae--all species of the genera Marisa and Pomacea except Pomacea bridgesi (spiketop applesnail). [~~Applesnails and Giant Rams-Horn Snail Family Ampullariidae and Marisa, except spiketop applesnail (Pomacea bridgesi).~~]

(17) [~~(18)~~]) Harmful or potentially harmful exotic plants--

(A) [~~Giant or~~] Dotted Duckweed: Family[:] Araceae [~~(previously Lemnaceae)~~]--Landoltia punctata;

(B) Salvinia: Family[:] Salviniaceae--all species of genus Salvinia;

(C) Water hyacinth: Family[:] Pontederiaceae--Eichhornia crassipes (floating water hyacinth) and E. azurea (rooted water hyacinth);

(D) Waterlettuce: Family[:] Araceae--Pistia stratiotes;

(E) Hydrilla: Family[:] Hydrocharitaceae--Hydrilla verticillata;

(F) Lagarosiphon: Family[:] Hydrocharitaceae--Lagarosiphon major;

(G) Eurasian Watermilfoil: Family[:] Haloragaceae--Myriophyllum spicatum;

(H) Alligatorweed: Family[:] Amaranthaceae--Alternanthera philoxeroides;

(I) Paperbark: Family[:] Myrtaceae--Melaleuca quinquenervia;

(J) Torpedograss: Family[:] Poaceae--Panicum repens;

(K) Water spinach (also called ong choy, rau mong and kangkong): Family[:] Convolvulaceae--Ipomoea aquatica.

(L) Ambulia (Asian marshweed): Family[:] Scrophulariaceae--Limnophila sessiliflora;

(M) Arrowleaf False Pickerelweed: Family[:] Pontederiaceae--Monochoria hastate;

(N) Heartshaped False Pickerelweed: Family[:] Pontederiaceae--Monochoria vaginalis;

(O) Duck-lettuce: Family[:] Hydrocharitaceae--Ottelia alismoides;

(P) Wetland Nightshade: Family[:] Solanaceae--Solanum tampicense;

(Q) Exotic Bur-reed: Family[:] Sparganiaceae--Sparganium erectum;

(R) Brazilian Peppertree: Family[:] Anacardiaceae--Schinus terebinthifolius; and

(S) Purple Loosestrife: Family[:] Lythraceae--Lythrum salicaria.

(18) [~~(19)~~] Harmful or potentially harmful exotic species exclusion zone--That part of the state that is both south of SH 21 and east of I-35, but not including Brazos County.

(19) [~~(20)~~] Immediately--Without delay; with no intervening span of time.

(20) [~~(21)~~] Manifestations of disease--Manifestations of disease include, but are not limited to, one or more of the following: heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(21) [~~(22)~~] Nauplius or nauplii--A larval crustacean having no trunk segmentation and only three pairs of appendages.

(22) [~~(23)~~] Operator--The person responsible for the overall operation of a wastewater treatment facility.

(23) [~~(24)~~] Place of business--A permanent structure on land where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased.

(24) [~~(25)~~] Post-larvae--A juvenile crustacean having acquired a full complement of functional appendages.

(25) [~~(26)~~] Private facility--A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water.

(26) [~~(27)~~] Private facility effluent--Any and all water which has been used in aquaculture activities.

(27) [~~(28)~~] Private pond--A pond, tank, lake, or other structure capable of holding cultured species in confinement wholly within or on private land.

(28) [~~(29)~~] Public aquarium--An American Association of Zoological Parks and Aquariums accredited facility for the care and exhibition of aquatic plants and animals.

(29) [~~(30)~~] Public waters--Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(30) [~~(31)~~] Quarantine condition--Confinement of exotic shellfish such that neither the shellfish nor the water in which they are or were maintained comes into contact with water in the state and with other fish and/or shellfish.

(31) [~~(32)~~] Shellfish disease specialist--A person with a degree in veterinary medicine or a Ph.D. who specializes in disease of shellfish.

(32) [~~(33)~~] Triploid grass or black carp--A grass carp (Ctenopharyngodon idella) or black carp (Mylophryngodon piceus) that has been certified by the United States Fish and Wildlife Service as having 72 chromosomes and as being functionally sterile.

(33) [~~(34)~~] Waste--Waste shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

(34) [~~(35)~~] Water in the state--Water in the state shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

(35) [~~(36)~~] Wastewater treatment facility--All contiguous land and fixtures, structures or appurtenances used for treating wastewater pursuant to a valid permit issued by the Texas Commission on Environmental Quality.

§57.112. General Rules.

(a) (No change.)

(b) Except as provided in §57.113 of this title (relating to Exceptions), it is an offense for any person to:

(1) release into the water of this state, import, sell, purchase, transport, propagate, or possess any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a harmful or potentially harmful exotic fish, shellfish, or aquatic plant; or

(2) take or possess a live grass carp from the water of this state where grass carp have been introduced under a permit issued by the department.

[~~(b) Except as provided in §57.113 of this title (relating to Exceptions), it is an offense for any person to release into the water of this state, import, sell, purchase, transport, propagate, or possess any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a harmful or potentially harmful exotic fish, shellfish, or aquatic plant.~~]

[~~(c) Except as specifically authorized in writing by the department, it is an offense for anyone to remove a live grass carp from the water of this state where grass carp have been introduced under a permit issued by the department.~~]

(c) [~~(d)~~] Violation of any provision of a permit issued under these rules is a violation of these rules.

§57.113. Exceptions.

(a) A person who holds a valid Exotic Species Permit issued by the department may possess, propagate, sell and transport [~~to the permittee's private facilities~~] exotic harmful or potentially harmful fish, shellfish and aquatic plants only as authorized in the permit provided the harmful or potentially harmful exotic species are to be used exclusively:

(1) - (2) (No change.)

(b) A person may possess exotic harmful or potentially harmful fish or shellfish, exclusive of grass carp, without a permit, if the fish or shellfish have been gutted or beheaded, or in the case of oysters, if the oysters have been shucked or otherwise removed from their shells.

(c) A person may possess grass carp taken [~~harvested~~] from public waters that have not been permitted for triploid grass carp, without a permit, if the grass carp have been gutted or beheaded.

(d) The holder of a valid triploid grass carp permit for private waters may possess grass carp taken from those waters if the grass carp have been gutted or beheaded.

(e) A person may possess grass carp taken from public waters that have been permitted for triploid grass carp, without a permit, if the department has determined that the stocking of grass carp has achieved the management objectives and the permit is no longer in effect. Any grass carp possessed must be gutted or beheaded.

(f) [~~(d)~~] A person who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell, triploid grass carp, bighead carp, blue tilapia (Oreochromis aureusa), Mozambique tilapia (O. mossambica), Nile tilapia (O. nilotocusa), or hybrids between the three tilapia species, unless otherwise provided by conditions of the permit or these rules.

(g) [~~(e)~~] An aquaculturist who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (Litopenaeus vannamei) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Harmful or Potentially Harmful Exotic Shellfish) and as provided by conditions of the permit and these rules.

(h) [~~(f)~~] An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport permitted exotic species to their facility only for the purpose of wastewater treatment.

(i) [~~(g)~~] A person may possess Mozambique tilapia in a private pond or private facility subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

(j) [~~(h)~~] The holder of a valid triploid grass carp permit issued by the department may possess triploid grass carp as provided by conditions of the permit and these rules.

(k) [~~(i)~~] A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

(1) live individuals of triploid grass carp, bighead carp, blue tilapia, Mozambique tilapia, Nile tilapia or hybrids of those species held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the fish have been gutted or beheaded; or

(2) live [~~Live~~] Pacific white shrimp [~~(Litopenaeus vannamei)~~] held in the place of business if the place of business is not located within the exclusion zone described in §57.111 of this title (relating to Definitions). However, such a dealer may only sell or deliver this species to another person if the shrimp are dead and packaged on ice or frozen.

(l) [~~(j)~~] The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.

(m) [~~(k)~~] An aquaculturist who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (Litopenaeus stylirostris) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title and as provided by conditions of the permit and these rules.

(n) [~~(l)~~] A person operating a mechanical plant harvester or who otherwise physically removes prohibited plants from a public water body in accordance with the provisions of a valid exotic species permit issued by the department may remove and dispose of prohibited plant species from public or private waters only by means authorized in the permit.

§57.114. Health Certification of Harmful or Potentially Harmful Exotic Shellfish.

(a) All disease-free [~~disease free~~] certification of harmful or potentially harmful exotic shellfish must be conducted by a shellfish disease specialist approved by the department.

(b) - (c) (No change.)

(d) Any person in possession of harmful or potentially harmful exotic shellfish stocks who observes one or more of the manifestations of disease appearing on the clinical analysis checklist provided by the department shall:

(1) (No change.)

(2) immediately place the entire facility under quarantine condition, immediately notify the department and immediately submit samples of the affected harmful or potentially harmful exotic shellfish to a department-approved [~~department approved~~] shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(e) (No change.)

(f) No more than 14 days prior to harvesting ponds or discharging any waste into or adjacent to water in the state, the permittee shall:

(1) (No change.)

(2) submit samples of the harmful or potentially harmful exotic shellfish from each pond or other structure containing such shellfish to a department-approved [~~department approved~~] shellfish disease specialist for analysis no more than 14 days prior to the first discharge or harvest and submit the results of such analyses to the department immediately upon receipt.

(g) If the results of an inspection performed under subsection (f)(1) of this section indicate the presence of one or more manifestations of disease, the permittee shall immediately place the entire facility under quarantine condition and immediately submit samples of the harmful or potentially harmful exotic shellfish from the affected portion(s) of the facility to a department-approved [~~department approved~~] shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(h) - (j) (No change.)

§57.116. Exotic Species Transport Invoice.

(a) (No change.)

(b) The exotic species transport invoice shall be provided by the permittee; one copy shall be retained by the permittee for a period of at least one year following shipping date and one copy shall be forwarded to the department [~~department's Exotic Species Program Leader~~].

(c) - (d) (No change.)

§57.117. Exotic Species Permit: Application Requirements.

(a) To be considered for an exotic species permit, the applicant shall:

(1) meet one or more of the following criteria:

(A) - (B) (No change.)

(C) possess a department-approved [~~department approved~~] research proposal involving use of harmful or potentially harmful exotic fish, shellfish or aquatic plants;

(D) - (E) (No change.)

(2) - (5) (No change.)

(b) - (d) (No change.)

§57.118. Exotic Species Permit Issuance.

(a) The department may issue an exotic species permit only to:

(1) an aquaculturist and only for species listed in §57.113(f), (g), and (m) [~~(d), (e), and (k)~~] of this title (relating to Exceptions);

(2) (No change.)

(3) department-approved [~~department approved~~] research programs; or

(4) (No change.)

(b) - (c) (No change.)

§57.119. Exotic Species Permit: Requirements for Permits.

(a) A copy of the exotic species permit shall be:

(1) made available for inspection upon request of [~~authorized~~] department personnel; and

(2) (No change.)

(b) (No change.)

(c) If a permittee discontinues aquaculture, research activities or public aquarium display involving harmful or potentially harmful exotic species or discontinues wastewater treatment, the permittee shall:

(1) (No change.)

(2) notify the department [~~department's Exotic Species Program Leader~~] at least 14 days prior to cessation of operation.

(d) - (g) (No change.)

(h) Upon discovery of release or escapement of harmful or potentially harmful exotic species from any [~~private~~] facilities authorized in an exotic species permit, the permittee must immediately halt discharge of all [~~private facility~~] effluent from the [~~aquaculture~~] facility. If the permittee's private facility is located within an aquaculture complex, upon discovery of release or escapement of harmful or potentially harmful exotic species, the permittee must immediately halt discharge of all [~~private~~] facility effluent.

(i) - (j) (No change.)

(k) Effluent [~~All private facility effluent~~] discharged from a permitted [~~an aquaculture~~] facility holding harmful or potentially harm-

ful exotic species must be routed through all devices for prevention of discharge of such species as required in the permit.

(l) A permittee must notify the department [~~department's Exotic Species Program Leader~~] in the event of change of ownership of the [~~aquaculture~~] facility named in that permittee's exotic species permit. Notification must be made immediately.

(m) (No change.)

§57.122. Permit Denial Review.

An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review. The decision of the review panel shall be final.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Natural Resources (or his or her designee);

(B) the Director of the Coastal Fisheries Division or Inland Fisheries Division, as appropriate; and

(C) the Deputy Director of the Coastal Fisheries Division or the designee of the Director of the Inland Fisheries Division.

§57.125. Triploid Grass Carp Permit; Application, Fee.

(a) - (c) (No change.)

(d) An applicant for a triploid grass carp permit or a permittee shall allow inspection of their facilities and ponds or lakes by an employee [~~authorized employees~~] of the department during normal business hours.

§57.126. Triploid Grass Carp Permit; Terms of Issuance.

(a) The department may issue a triploid grass carp permit upon a finding that:

(1) - (4) (No change.)

(5) issuance of a triploid grass carp permit and subsequent stocking is consistent with department fisheries or wildlife management activities and objectives;

[~~(6) issuance of a triploid grass carp permit is consistent with the Parks and Wildlife Commission's environmental policy;~~]

[~~(7) issuance of a triploid grass carp permit and subsequent stocking does not conflict with specific management objectives of the department; and~~]

(6) [~~(8)~~] issuance of a triploid grass carp permit and subsequent stocking will not detrimentally affect threatened or endangered species populations, or their habitat; and

(7) [~~(9)~~] issuance of a triploid grass carp permit and subsequent stocking will not detrimentally affect coastal wetland and estuarine ecosystems.

(b) - (c) (No change.)

§57.131. Exotic Species Interstate Transport Permit: Application and Issuance.

(a) (No change.)

(b) To apply for an exotic species interstate transport permit an applicant shall:

(1) (No change.)

(2) remit to the department [~~department's Exotic Species Program Leader~~] all applicable fees.

(c) - (d) (No change.)

§57.132. Exotic Species Interstate Transport Permit: Permittee Requirements.

(a) - (b) (No change.)

(c) Permittee must notify the department [~~department's Exotic Species Program Leader~~] in writing or by facsimile transmission at least 72 hours prior to transport of live harmful or potentially harmful exotic species indicating transport date, intended transportation route, and name and physical address of recipient.

(d) While transporting harmful or potentially harmful exotic species within the state of Texas, a holder of an exotic species interstate transport permit must notify the department [~~department's Exotic Species Program Leader~~] in the event of escapement or release of harmful or potentially harmful exotic species within two hours of release.

(e) (No change.)

§57.136. Special Provisions--Water Spinach.

(a) - (b) (No change.)

(c) Facility requirements. In addition to the provisions of this subchapter applicable to a facility where harmful or potentially exotic fish, shellfish, or aquatic plants are cultured, the following provisions apply to the culture of water spinach:

(1) - (4) (No change.)

(5) a buffer area void of all plants, with the exception of mature woody vegetation, around the perimeter of all areas where water spinach is cultured, handled, packed, processed, stored, shipped, or disposed of. The width of the buffer area shall be at least 10 feet unless the department grants a modification of width based on the location of greenhouses built before 2009; [~~a buffer area of at least 10 feet in width and void of all vegetation must be maintained around the perimeter of all areas where water spinach is cultured, handled, packed, processed, stored, shipped, or disposed of;~~]

(6) - (7) (No change.)

(d) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300545
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §57.122

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of Parks and Wildlife Code, §66.007 and §66.0072, which require the commission to make rules to carry out those sections.

The proposed repeal affects Parks and Wildlife Code, Chapter 66.

§57.122. Appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §§57.251, 57.253, 57.257

The amendments are proposed under Parks and Wildlife Code, §66.015, which requires the department to establish rules and regulations governing the issuance of permits under that section.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

§57.251. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Native species--All fish, shellfish, or aquatic plants documented by the department to live, spawn, or reproduce in Texas and whose first documented occurrence in Texas waters was not the result of intentional or unintentional importation by man. This includes those native species from Texas offshore waters encompassing the Texas Territorial Sea and federal waters of the Exclusive Economic Zone. [~~and whose first documented occurrence in Texas offshore waters was not the result of intentional or unintentional importation by man.~~]

(7) - (11) (No change.)

§57.253. Permit Application.

(a) - (e) (No change.)

(f) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) - (2) (No change.)

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Natural Resources [~~Operations~~] (or his or her designee);

(B) - (C) (No change.)

§57.257. Reporting and Recordkeeping.

(a) - (c) (No change.)

(d) The records required by this section shall be made available to the department upon the request of a department employee [~~acting within the scope of official duties~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. COMMERCIALLY PROTECTED FINFISH

31 TAC §57.371

The new section is proposed under Parks and Wildlife Code, §66.020, which authorizes the commission to regulate the possession and importation of protected finfish.

The proposed new section affects Parks and Wildlife Code, §66.020.

§57.371. Applicability: Commercially Protected Finfish.

(a) The finfish in this subsection may be imported only by the holder of a finfish import license. To be lawfully imported, sold or purchased in Texas bass of the genus Micropterus, crappie, flathead catfish, red drum, striped bass, white bass or a hybrid of any of these fish must be farm raised and fed a prepared feed containing 20% or more of plant protein or grain by-products as a primary food source.

(b) Except as provided in Parks and Wildlife Code, §66.020, it is unlawful for any person to buy, offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, barter, or exchange the species listed in this subsection:

(1) Bass of the genus Micropterus;

(2) Bass, striped;

(3) Bass, white;

(4) Bass, yellow;

(5) Catfish, flathead;

(6) Crappie, black;

(7) Crappie, white;

(8) Drum, red;

(9) Grouper, goliath (formerly called jewfish);

(10) Marlin, blue;

(11) Marlin, white;

(12) Muskellunge;

(13) Pike, northern;

(14) Sailfish;

(15) Sauger;

(16) Seatrout, spotted;

(17) Snook;

(18) Spearfish, longbill;

(19) Tarpon;

(20) Walleye; and

(21) Hybrids of any of these fish.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. PERMITS TO SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §§57.377, 57.378, 57.380 - 57.382

The amendments are proposed under Parks and Wildlife, §67.004, which requires the commission by regulation to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed amendments affect Parks and Wildlife Code, Chapter 67.

§57.377. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Game fish--As defined in §57.971(15)(A) [~~§65.3(23)~~] of this title (relating to Definitions).

(3) (No change.)

(4) Public freshwater--All of the state rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those freshwaters not defined as coastal waters in §57.971 [~~§65.3~~] of this title (relating to Definitions [~~Statewide Hunting and Fishing Proclamation~~]), where public access is available without discrimination.

§57.378. Applicability: Nongame Fishes.

A permit to sell the following species of nongame fish taken from public fresh water may be issued if the department determines that the sale is necessary to properly manage the species.
Figure: 31 TAC §57.378

§57.380. Permit Application.

(a) An applicant for a permit to sell nongame fish taken from public fresh waters of this state shall submit a completed [~~notarized~~] application to the department on a form supplied by the department.

(b) (No change.)

§57.381. Permit Specifications and Requirements.

(a) A permit issued by the department to sell nongame fish taken from public fresh water shall specify:

(1) (No change.)

(2) the water body [~~location and time~~] where the activity is permitted;

(3) the nongame fish species for which take and sale is allowed; and

[~~(4) number of nongame fish for which take and sale is allowed;~~]

(4) [~~(5)~~] the types and number of devices which may be used to take nongame fish.[~~; and~~]

(b) - (h) (No change.)

§57.382. Harvest and Sales Reports.

Annual harvest and sales reports must be submitted by the permittee to the department on forms provided by the department.

(1) Annual reports must be received by the department on or before the 10th day of January [~~December~~] each year.

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300548
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 389-4775

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SUBCHAPTER F. COLLECTION OF BROODFISH FROM TEXAS WATERS

31 TAC §§57.391, 57.392, 57.394, 57.395, 57.397, 57.399

The amendments and new section are proposed under Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for issuance of

a permit authorized under Parks and Wildlife Code, Subchapter P.

The proposed amendments and new section affect Parks and Wildlife Code, Subchapter P.

§57.391. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (11) (No change.)

(12) Recreational Fishing [~~Sportfishing~~]--The act of using legal means or methods to take or to attempt to take aquatic life for noncommercial purposes from the public waters of this state.

§57.392. General Rules.

(a) While collecting broodfish, an aquaculturist or designated agent must be in possession of a valid recreational fishing [~~sportfishing~~] license in all public waters, a saltwater fishing stamp in public salt water, and broodfish permit issued by the department.

(b) (No change.)

§57.394. Broodfish Collection; Notification.

The department's nearest coastal or inland regional fisheries office [~~aquaculture coordinator~~] and [~~nearest~~] law enforcement office must be notified no less than 48 hours prior to commencement of broodfish collection.

§57.395. Broodfish Permits; Fees, Terms of Issuance.

(a) - (d) (No change.)

(e) To be considered for a broodfish permit, the applicant shall:

(1) complete and submit a broodfish permit application on a form provided by the department; and

(2) provide a copy of the applicant's aquaculture license issued by the Texas Department of Agriculture with the application.[;]

[~~(3) submit the amount of $25 to the department.~~]

(f) - (g) (No change.)

§57.397. Broodfish Permit; Revocation.

The department may revoke a broodfish permit upon finding that a permittee or his agent:

(1) (No change.)

(2) does not hold a valid recreational fishing [~~sportfishing~~] license while collecting in all public waters of this state [~~in addition to a saltwater stamp in public salt water~~];

(3) - (6) (No change.)

§57.399. Permit Denial Review.

An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review. The decision of the review panel shall be final.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Natural Resources (or his or her designee);

(B) the Director of the Coastal Fisheries Division; and

(C) the Deputy Director of the Coastal Fisheries Division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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31 TAC §57.399

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for issuance of a permit authorized under Parks and Wildlife Code, Subchapter P.

The proposed repeal affects Parks and Wildlife Code, Subchapter P.

§57.399. Appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2013.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 389-4775

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SUBCHAPTER H. FISHERY MANAGEMENT PLANS

31 TAC §57.691

The amendment is proposed under Parks and Wildlife Code, §76.301, which requires a proclamation issued under Parks and Wildlife Code, §76.301 to contain findings by the commission that support the need for the proclamation, and §77.077, which

requires a proclamation issued under Parks and Wildlife Code, §77.077 to contain findings by the commission that support the need for the proclamation.

The proposed amendment affects Parks and Wildlife Code, Chapters 76 and 77.

§57.691. Fishery Management Plans.

(a) - (b) (No change.)

(c) The Oyster Fishery Management Plan and the Economic Impact Analysis are adopted by reference.

(d) The Shrimp Fishery Management Plan and the Economic Impact Analysis are adopted by reference.

(e) [~~(c)~~] Copies of these plans may be obtained at the Texas Parks and Wildlife Department Headquarters at 4200 Smith School Road, Austin, Texas 78744.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2013.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 389-4775

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SUBCHAPTER K. SCIENTIFIC AREAS

31 TAC §57.920

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Parks and Wildlife Code, Chapter 13, Subchapter B, which authorizes the commission to adopt rules governing activities in state scientific areas, and Parks and Wildlife Code, §81.501 and §81.502, which authorize the Commission to create state scientific areas.

The proposed repeal affects Parks and Wildlife Code, Chapters 13 and 81.

§57.920. Nine-Mile Hole State Scientific Area.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300551
Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER L. AQUATIC VEGETATION MANAGEMENT

31 TAC §57.930, §57.932

The amendments are proposed under Parks and Wildlife Code, §11.082, which requires the department to develop and by rule adopt a state aquatic vegetation management plan following the generally accepted principles of integrated pest management.

The proposed amendments affect Parks and Wildlife Code, Chapter 11.

§57.930. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (7) (No change.)

(8) NPDES--National Pollutant Discharge Elimination System. The NPDES Permit Program is administered by EPA under the Clean Water Act.

(9) [~~(8)~~] Nuisance aquatic vegetation--any non-native or native vascular plant species that is determined, in consideration of TPWD guidance, to have the potential to substantially interfere with the uses of a public body of surface water.

(10) [~~(9)~~] Public body of surface water--any body of surface water that is not used exclusively for an agricultural purpose. The term does not include impounded water on private property or water being transported in a canal.

(11) [~~(10)~~] Public drinking water provider--any person who owns or operates a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals at least 60 days out of the year.

(12) [~~(11)~~] State plan--the state aquatic vegetation management plan authorized by Parks and Wildlife Code, §11.082, and described in §57.931 of this title (relating to State Aquatic Vegetation Plan Applicability) and §57.932 of this title (relating to State Aquatic Vegetation Plan).

(13) [~~(12)~~] TCEQ--Texas Commission on Environmental Quality.

(14) [~~(13)~~] TDA--the Texas Department of Agriculture.

(15) [~~(14)~~] TPWD--the Texas Parks and Wildlife Department.

(16) [~~(15)~~] Treatment proposal--a submission to TPWD on a TPWD-approved form that describes intended measures to control nuisance aquatic vegetation.

(17) [~~(16)~~] Water district--a conservation and reclamation district or an authority created under authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, that has jurisdiction over a public body of surface water. The term does not include a navigation district or a port authority.

§57.932. State Aquatic Vegetation Plan.

(a) Requirements Applicable to All Measures to Control Nuisance Aquatic Vegetation.

(1) - (2) (No change.)

(3) Modification of Guidance. TPWD will publish notice in the *Texas Register* [~~Texas Register~~] and seek input from interested

parties when it proposes major modifications to [~~modify~~] the guidance document such as changes in procedures and notification. [~~TPWD will also mail notice to persons who so request.~~] Notice shall be provided at least 60 days prior to the effective date of any changes to the guidance document. The notice shall describe the proposed modifications and the reasons for the modifications, and how comments on the proposed modifications may be made to TPWD. Minor modifications such as changes of address, typographical corrections, and addition of species or approved herbicide may be published on the TPWD website without submission to the Texas Register.

(4) Review by TPWD. Prior to undertaking any measures to control nuisance aquatic vegetation in a public body of surface water, a person operating under the state plan (exclusive of TPWD personnel or its contractors) shall provide to TPWD a treatment proposal, on a form included in the guidance document, no later than the 14th day before the measures are to begin. TPWD will review and may disapprove or amend any treatment proposal and will respond no later than the day before the proposed control measures are to begin. Where appropriate, TPWD will provide technical advice and recommendations regarding prevention of nuisance aquatic vegetation problems. The person submitting the treatment proposal shall have the burden of demonstrating compliance with the state plan. Where a local plan governs, treatment proposals are not subject to TPWD review, approval, and amendment, but are to be submitted to TPWD (pursuant to §57.934(b) of this title, relating to Local Aquatic Vegetation Plan) for informational purposes.

(b) Additional Requirements Applicable to the Use of Aquatic Herbicides to Control Nuisance Aquatic Vegetation.

(1) - (2) (No change.)

(3) In Tier I or emergency situations TPWD and/or its contractors may conduct herbicide treatment with only 24 hours notice to controlling authorities and persons on the notification list, provided the treatment is at least two river or lake miles away from an active potable water intake.

(4) [~~(3)~~] An individual who is not a licensed applicator may not apply aquatic herbicides unless the governing entity affirmatively finds, after receiving the proper notice as provided in subsection (b)(2) of this section, that the application will be consistent with the state plan. The governing entity shall respond to the notice given by an individual who is not a licensed applicator no later than the day before the date the application is scheduled to occur.

(5) [~~(4)~~] An individual who is a licensed applicator may apply aquatic herbicide after notice consistent with subsection (b)(2) of this section if the governing entity finds that the application would be consistent with the state plan or does not disapprove the application no later than the day before the application is to occur.

(6) [~~(5)~~] After receiving notice of a proposed application of aquatic herbicide, a governing entity, or TPWD in the absence of such an entity, shall:

(A) provide the individual proposing the application with the state plan;

(B) notify the individual in writing that it is a violation of state law to apply aquatic herbicides in a public body of water in a manner inconsistent with the state plan; and

(C) determine whether the proposed application is consistent with the state plan.

(7) [~~(6)~~] The governing entity shall prohibit the proposed application of aquatic herbicide if the governing entity finds that the proposed application is inconsistent with the state plan[~~, or, if the proposed application is consistent with the state plan, so notify the person~~].

(8) [~~(7)~~] State money shall not be used to pay for treatment of a public body of surface water with an aquatic herbicide unless the application of the herbicide is performed by an applicator licensed for aquatic herbicide application by the TDA.

(9) [~~(8)~~] Any application of aquatic herbicide shall comply with label rates approved by the EPA.

(10) Any application of aquatic herbicide shall comply with applicable federal NPDES requirements under the Clean Water Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
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SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes amendments to §§57.971 - 57.973, 57.976, 57.981, 57.982, 57.992, and 57.996, concerning the Statewide Recreational and Commercial Fishing Proclamations. The proposed amendments include changes occurring as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §57.971, concerning Definitions, would add new definitions for "crab" and "handfishing," eliminate a redundancy in the definition of "purse seine," and clarify the definitions of "trap" and "residence." The proposed amendment would add new paragraph (9) to define "crabs" as "all species within the families *Portunidae* and *Menippidae.*" Under Parks and Wildlife Code, §78.102(1), crabs are defined as "all species within the families *Portunidae* and *Xanthidae.*" There is no universal method or system for assigning taxonomic rank to organisms. The generally accepted goal of taxonomy is to group organisms by similarities of function, structure, or genetics; however, because scientific investigations continue to reveal previously unknown information about specific organisms or groups of organisms, their taxonomic designations can be changed, even though the organisms themselves remain unchanged. Recent generally accepted taxonomic revisions have split the family *Xanthidae* into seven new families, one of which *(Mennipidae)* contains species of crabs indigenous to Texas. The proposed amendment reflects recent changes in taxonomic nomenclature with respect to crabs.

The proposed amendment also would create new paragraph (25), which defines "handfishing" as "fishing by the use of hands

only and without any other fishing devices such as gaff, pole hook, stick, trap, or spear." The definition is a verbatim repetition of the statutory definition of handfishing in Parks and Wildlife Code, §66.115(a), with the exception of the word "stick." The department has determined that although it's clear from the grammatical constructions "use of hands only" and "such as...", followed by a list of gears, that the intent of the statute is to restrict handfishing solely to the use of hands, it is necessary to clarify that in addition to the statutory proscription on the use of gaffs, pole hooks, traps, or spears, sticks are also unlawful.

The proposed amendment to paragraph (32) would eliminate the current definition of "permanent residence" in order to create a new definition of "residence" in proposed new paragraph (37).

The proposed amendment would create new paragraph (37), which would define "residence." The intent of the current definition of "permanent residence" is to prevent the use of temporary accommodations as final destinations for purposes of avoiding compliance with possession limits and documentation requirements. The department considers that a person may maintain more than one residence and should not be required to return to his or her domicile with a daily bag or possession limit. Therefore, the department has determined that the current rule is unintentionally restrictive and proposes a modification to define a "residence" as "a permanent structure where a person regularly sleeps and keeps personal belongings such as furniture and clothes," while retaining the current prohibition on temporary abodes or dwellings such as a hunting or fishing club, club house, cabin, tent, or trailer house or mobile home used as a hunting or fishing camp, or any hotel, motel, or rooming house. The proposed amendment would eliminate the current reference to "hunting, fishing, pleasure, or business trip" and replace it with "temporary basis." The department has determined that the rule should not attempt to characterize or list the possible purposes for the use of an accommodation but instead establish the permanency of use.

The proposed amendment to current paragraph (35), regarding "purse seine (net)," would remove the word "net," which is redundant.

The proposed amendment to current paragraph (42), regarding the definition of "trap," would clarify the current definition by appending to it a list of examples of devices (box, barrel, or pipe) the department considers to meet the criteria established by the current definition.

The proposed amendment to §57.972, concerning General Rules, would update the taxonomic names of sawfishes, clarify an existing rule governing the use of boats to drive fish, and remove references to possession of red drum tags. As discussed in the proposed amendment to §57.971 regarding crabs, the taxonomic designations of organisms are not fixed. Similar to the case of crabs, the scientific names of sawfishes have been changed. The proposed amendment to subsection (f) reflects the change.

Under current subsection (g)(7), it is unlawful for any person to use any vessel to harass fish. The proposed amendment would alter subsection (g)(7) by eliminating the word "harass" and replacing it with the words "harry, herd, or drive," including a proscription on the operation of any vessel in a "repeated circular course," and making it clear that the actions described in the paragraph must be "for the purpose of or result in the concentration of fish for the purpose of taking or attempting to take fish." The proposed amendment is necessary because the department has determined that it is necessary to provide a clearer articulation of the acts or actions the department considers to constitute the use of boats to move fish for purposes of take.

The proposed amendment to subsection (g) also eliminates paragraph (13)(G) and (I), concerning the possession and use of red drum tags. Under the current rules, a person may catch and retain only one red drum of greater than 28 inches in length, which must be tagged with the red drum tag from the person's fishing license, and a person may exchange a used red drum tag for a bonus red drum tag and then retain another oversize red drum; however, no person may be in simultaneous possession of a red drum tag and a bonus red drum tag, or the exempt equivalents. The current rules were promulgated at a time when the department was concerned about red drum populations and needed to get firm numbers concerning their harvest. Long-term department trend data indicate that oversize red drum constitute less than 3% of the total red drum harvest; therefore, there is no longer a need to obtain highly detailed harvest information or to prohibit the simultaneous possession of a red drum tag and a bonus red drum tag.

The proposed amendment to §57.973, concerning Devices, Means, and Methods, consists of several actions. The proposed amendment would alter current subsection (b) to make it a list of places where angling is restricted solely to the use of pole-and-line devices. Provisions regarding those places where the number of devices that may lawfully be employed are regulated would be relocated to proposed new subsection (c). With the exception of proposed subsection (b)(4), the changes are nonsubstantive. Proposed subsection (b)(4) would add Canyon Lake Project #6 to the list of places where angling is restricted solely to pole-and-line. Within the City of Lubbock there are a series of urban lakes, and all of the waterbodies except one (Canyon Lake Project #6) are classified as community fishing lakes (CFL), on which angling is by rule restricted solely to pole-and-line. The Canyon Lake Project #6 lake is 82 acres, which makes it larger than the 75-acre minimum for established by rule for CFLs. Under the provisions of the subchapter, CFLs have a specific set of regulations on catfish harvest and gear usage. Confusion exists among local anglers in the Lubbock area regarding the regulations in effect on Canyon Lake Project #6. The department has determined that for purposes of consistency and alleviation of angler confusion, the harvest regulations on Canyon Lake Project #6 should be the same as the other CFLs: five fish daily bag limit for channel and blue catfish (no minimum length limit), methods restricted to pole-and-line only, no more than two devices per person.

The proposed amendment would alter current subsection (f) by adding new paragraph (8) to govern handfishing. The Texas Legislature in 2011 enacted House Bill 2189, which amended Parks and Wildlife Code by adding §66.115, which made it lawful to "fish for catfish by use of the hands only and without any other fishing device such as a gaff, pole hook, trap, or spear." The proposed amendment replicates the statute in rule for ease of reference and recapitulates that it is unlawful to place or use a trap for the purpose of taking catfish. The proposed amendment also would alter current subsection (f)(14) by removing the word "net" from the initial phrase "purse seine (net). Because "purse seine" is defined under §57.971 as a net, the phrase is redundant.

The proposed amendment to §57.976, concerning Importation of Aquatic Animal Life, would retitle the section, remove the provisions concerning possession of wildlife in current subsection (a),

and add provisions clarifying the legal status of aquatic animal life taken in the Exclusive Economic Zone (EEZ) under federal jurisdiction. The department has determined that the provisions of current §57.976(a), which apply to the possession of resources, would be more appropriate if part of §57.981, concerning Bag, Possession, and Length Limits. The remaining provisions, with the addition of the provisions that apply to resources brought into state waters from the EEZ, could then be in a section renamed as "Importation of Aquatic Animal Life." The state of Texas has management jurisdiction for fisheries resources in state waters (which extend nine nautical miles from the Texas coast), but the area from the seaward edge of state waters for a distance of 200 miles fall within federal management jurisdiction. In some cases, the bag and possession limits in state waters for certain species differ from those in federal waters for those species. It is common for state game wardens to encounter persons in state waters who possess aquatic animal life that was unlawfully taken in federal waters. At the current time, such cases cannot be filed in a state jurisdiction; however, increased caseloads in federal courts have caused federal prosecutors to become increasingly selective about which cases to prosecute. This has led to a perception that compliance with resource conservation regulations is unnecessary, which is injurious to Texas aquatic animal life because it is a shared resource. The proposed amendment would make it a violation of state law to possess aquatic animal life in Texas that was unlawfully taken in violation of federal law. The proposed amendment is necessary to encourage the angling public to comply with resource conservation regulations irrespective of jurisdiction.

The proposed amendment to §57.981, concerning Bag, Possession, and Length Limits, would add a provision concerning the applicability of possession limits and import provisions from current §57.976 concerning possession of resources (covered in the discussion of the proposed amendment of §57.976). In 2010 the department restructured hunting and fishing regulations to separate hunting rules from fishing rules and recreational fishing rules from commercial fishing rules. In the process, the department overlooked a provision governing the endpoint of the applicability of possession limits. That provision, which states that for all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed, would be added to §57.981 as subsection (a). The provisions being relocated from §57.976 would become new subsection (c)(4).

The proposed amendment to §57.981 also would alter current harvest regulations for largemouth bass on Kurth Reservoir, a 726-acre reservoir located approximately five miles north of Lufkin. Current use is recreation, but the City of Lufkin has plans to supply water for mining ventures. Current harvest regulations for largemouth bass consist of a 14-inch minimum length limit and a five-fish daily bag limit. Kurth currently supports a high-quality largemouth bass fishery as reflected in population sampling and in anglers' catches. Staff believes these metrics indicate the reservoir has the potential to develop into a trophy bass fishery. A sample of registered anglers who had purchased a 2011 access permit to the reservoir were sent a questionnaire on their opinion of the overall fishery and current largemouth bass regulations. Survey respondents were very satisfied with the fishery, and 65% indicated they would like more restrictive largemouth regulations. The proposed amendment would establish a maximum length limit of 16 inches, which is intended to increase numbers of trophy-sized bass in the population by providing protection to large bass currently vulnerable to harvest (greater than 14 inches). Allowing harvest of bass 16 inches or shorter also could decrease intraspecific competition and increase growth rates. The proposed amendment also would allow one fish of 24 inches or greater to be retained alive in a live well for purposes of immediate weighing using personal scales. Bass weighing 13 pounds or more could be retained for donation to the ShareLunker Program; otherwise, fish would have to be immediately released.

The proposed amendment to §57.981 also would alter current harvest regulations for largemouth bass on Lake Jacksonville, a 1,206-acre reservoir located approximately 20 miles south of Tyler. The current 18-inch minimum length and five-fish daily bag limit was established in September 2000, due to angler concerns about the scarcity of fish larger than the 14-inch statewide minimum length. The current regulation has been successful in restructuring the largemouth bass population and producing more fish 18 inches or longer. Recently, largemouth bass tournament angling has become increasingly popular, with Lake Jacksonville hosting at least three weekly tournaments. With the increase in tournament activity, anglers requested being allowed to be able to weigh in 14-18 inch bass. Department staff proposed a five-fish daily bag limit with no minimum length and a retention limit of two fish less than 18 inches. The proposed amendment is intended to allow bass to be weighed-in during tournaments and to facilitate the harvest of additional bass, but still provide some harvest protection for bass in the 14-to-18-inch size range. In an on-line survey designed to evaluate angler opinion on possible changes to bass regulations, 91 anglers responded to the survey with 2/3 in favor of the proposed regulation.

The proposed amendment to §57.982, concerning Crabs and Ghost Shrimp, would remove a historical reference to the previous scientific name for ghost shrimp. The change is nonsubstantive.

The proposed amendment to §57.992, concerning Bag, Possession, and Length Limits, would alter subsection (a) to clarify that the possession limit applies to aquatic animal life possessed or stored by any person, but does not apply to aquatic animal life that has been lawfully obtained and for which the possessor has a receipt or invoice indentifying the person the aquatic life was obtained from, the number and species, date of sale, and any other information required to be on a sales ticket or invoice. The clarification is necessary to clearly delineate the standards that apply to possession of aquatic animal life in excess of possession limits.

The proposed amendment also eliminates the special regulations for black drum and sheepshead, which are no longer necessary because commercial and recreational regulations are now in different divisions of Chapter 57.

The proposed amendment to §57.996, concerning Crabs and Ghost Shrimp, would remove a historical reference to the previous scientific name for ghost shrimp and reflect that ghost shrimp may not be retained for commercial purposes. The change is nonsubstantive.

Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Kurzawski also has determined that for each of the first five years that the rules as proposed are in effect, the public bene-

fit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Ken Kurzawski (Inland Fisheries) at (512) 389-4591, e-mail: ken.kurzawski@tpwd.state.tx.us; Jeremy Leitz (Coastal Fisheries) at (512) 389-4333, e-mail: jeremy.leitz@tpwd.state.tx.us; or Brandi Reeder (Law Enforcement) at (512) 389-4853, e-mail brandi.reeder@tpwd.state.tx.us. Comments also may be submitted via the department's website at http://www.tpwd.state.tx.us/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§57.971 - 57.973, 57.976

The amendments are proposed under the authority of Parks and Wildlife Code, §46.0085, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 46; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §66.115, which authorizes the commission to promulgate regulations concerning handfishing; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 46, 61, 66, and 67.

§57.971. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (8) (No change.)

(9) Crab--All species within the families *Portunidae* and *Menippidae.*

(10) [~~(9)~~] Crab line--A baited line with no hook attached.

(11) [~~(10)~~] Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(12) [~~(11)~~] Day--A 24-hour period of time that begins at midnight and ends at midnight.

(13) [~~(12)~~] Dip net--A mesh bag suspended from a frame attached to a handle.

(14) [~~(13)~~] Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes.

(15) [~~(14)~~] Fish--

(A) Game fish--Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, tripletail, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(16) [~~(15)~~] Fishing--Taking or attempting to take aquatic animal life by any means.

(17) [~~(16)~~] Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(18) [~~(17)~~] Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "Common and Scientific Names of Fishes from The United States, Canada and Mexico."

(19) [~~(18)~~] Fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons engaged in fishing in the water of this state.

(20) [~~(19)~~] Fishing guide deck hand--A person in the employ of a fishing guide who assists in operating a boat for compensation to accompany or to transport a person or persons engaged in fishing in the water of this state.

(21) [~~(20)~~] Folding panel trap--A metallic or non-metallic mesh trap, the side panels hinged to fold flat when not in use, and suspended in the water by multiple lines.

(22) [~~(21)~~] Gaff--Any hand-held pole with a hook attached directly to the pole.

(23) [~~(22)~~] Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines and crab traps fished under a commercial license, the date the device was set out.

(24) [~~(23)~~] Gig--Any hand-held shaft with single or multiple points.

(25) Handfishing--Fishing by the use of hands only and without any other fishing devices such as gaff, pole hook, trap, stick, or spear.

(26) [~~(24)~~] Headboat--A vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

(27) [~~(25)~~] Inside waters--All bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls.

(28) [~~(26)~~] Jug line--A fishing line with five or less hooks tied to a free-floating device.

(29) [~~(27)~~] Lawful archery equipment--Longbow, recurved bow, and compound bow.

(30) [~~(28)~~] License year--The period of time for which an annual fishing license is valid.

(31) [~~(29)~~] Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(32) [~~(30)~~] Paddle craft--Any non-motorized vessel.

(33) [~~(31)~~] Paddle-craft fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons by means of a non-motorized vessel engaged in fishing in the coastal waters of this state.

~~[(32) Permanent residence--One's domicile. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.]~~

(34) [~~(33)~~] Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(35) [~~(34)~~] Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(36) [~~(35)~~] Purse seine [~~(net)~~]--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(37) Residence--A permanent structure where a person regularly sleeps and keeps personal belongings such as furniture and clothes, but does not include a temporary abode or dwelling such as a hunting or fishing club, or any club house, cabin, tent, or trailer house or mobile home used as a hunting or fishing camp, or any hotel, motel, or rooming house used on a temporary basis.

(38) [~~(36)~~] Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(39) [~~(37)~~] Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp *(Callichirus islagrande* [~~Callichirus islagrande, formerly Callianassa islagrande~~]) from their burrows.

(40) [~~(38)~~] Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(41) [~~(39)~~] Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not; include arrows.

(42) [~~(40)~~] Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(43) [~~(41)~~] Throwline--A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

(44) [~~(42)~~] Trap--A rigid device of various designs and dimensions used to entrap aquatic life, including a man-made device such as a box, barrel, or pipe.

(45) [~~(43)~~] Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(46) [~~(44)~~] Trotline--A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(47) [~~(45)~~] Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(48) [~~(46)~~] Wildlife resources--For the purposes of this subchapter, all aquatic animal life

§57.972. General Rules.

(a) - (e) (No change.)

(f) There is no open season on porpoises, dolphins (mammals), whales, or sawfishes *(Pristis pectinata* and *P. pristis)* [~~(Pristis perotteti)~~].

(g) It is unlawful:

(1) - (6) (No change.)

(7) for any person to use any vessel to harry, herd, or drive fish including but not limited to operating any vessel in a repeated circular course, for the purpose of or resulting in the concentration of fish for the purpose of taking or attempting to take fish [~~for any person to use any vessel to harass fish~~];

(8) - (12) (No change.)

(13) for any person to:

(A) - (E) (No change.)

(F) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or saltwater stamp holder; or

[(G) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or saltwater stamp holder;]

(G) [(H)] have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder.[; or]

[(I) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.]

(h) - (k) (No change.)

§57.973. Devices, Means and Methods.

(a) (No change.)

(b) Game and non-game fish may be taken only by pole and line in or on [only in]:

(1) community fishing lakes; [however, on community fishing lakes that are not within or part of a state park, no person may employ more than two pole-and-line devices at the same time;]

(2) sections of rivers lying totally within the boundaries of state parks[, and no person may employ more than two pole-and-line devices at one time on any dock, pier, jetty, or other manmade structure within a state park];

(3) any dock, pier, jetty, or other manmade structure within a state park;

(4) Canyon Lake Project #6 (Lubbock County);

(5) [(3)] Lake Pflugerville (Travis County);

(6) [(4)] the North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam;

(7) [(5)] the South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam; and

(8) [(6)] Wheeler Branch (Somervell County).

(c) No person may employ more than two pole-and-line devices at the same time on:

(1) any dock, pier, jetty, or other manmade structure within a state park; and

(2) community fishing lakes that are not within or part of a state park.

(d) [(c)] It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subchapter.

(e) [(d)] In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(f) [(e)] Aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only by hand or with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by the Parks and Wildlife Commission and regulations adopted by the Parks and Wildlife Code.

(g) [(f)] Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(A) Only non-game fish may be taken with a cast net.

(B) In salt water, non-game fish may be taken for bait purposes only.

(2) Crab line. It is unlawful to fish a crab line for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length and six inches in width bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the end fixtures.

(3) Crab trap. It is unlawful to:

(A) fish for commercial purposes under authority of a commercial crab fisherman's license with more than 200 crab traps at one time;

(B) fish for commercial purposes under authority of a commercial finfish fisherman's license with more than 20 crab traps at one time;

(C) fish for non-commercial purposes with more than six crab traps at one time;

(D) fish a crab trap in the fresh waters of this state;

(E) fish a crab trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab-retaining chamber, and located on the outside trap walls of each chamber; and

(iii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-a-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-b-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-c-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog

rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed;

(F) fish a crab trap for commercial purposes under authority of a commercial crab fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial crab fisherman's license plate number other than the commercial crab fisherman's license plate number displayed on the crab fishing boat;

(G) fish a crab trap for commercial purposes under authority of a commercial finfish fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the letter 'F' and the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(H) fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;

(I) fish a crab trap in public salt waters for non-commercial purposes without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 10 days after date set out;

(J) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula or possess, use or place more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County;

(K) remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(L) place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(M) fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(N) use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(4) Dip net.

(A) It is unlawful to use a dip net except:

(i) to aid in the landing of fish caught on other legal devices; and

(ii) to take non-game fish.

(B) In salt water, non-game fish may be taken for bait purposes only.

(5) Folding panel trap.

(A) Only crabs may be taken with a folding panel trap.

(B) It is unlawful to use a folding panel trap with an overall surface area, including panels, exceeding 16 square feet.

(6) Gaff.

(A) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(B) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(7) Gig. Only non-game fish may be taken with a gig.

(8) Handfishing. For use in fresh water only.

(A) Only blue, channel, and flathead catfish may be taken by means of handfishing.

(B) It is unlawful to intentionally place or use a trap in public waters for the purpose of taking catfish by handfishing.

(9) [~~(8)~~] Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(A) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 10 days after the date set out, and must include the number of the permit to sell non-game fish taken from fresh water, if applicable;

(B) for commercial purposes that is not marked with an orange free-floating device;

(C) for non-commercial purposes that is not marked with a white free-floating device;

(D) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(10) [~~(9)~~] Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(11) [~~(10)~~] Minnow trap (fresh water and salt water). It is unlawful to use a minnow trap that is not equipped with a gear tag. A gear tag is valid for 10 days after the date it is set out.

(A) Only non-game fish may be taken with a minnow trap.

(B) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(12) [~~(11)~~] Perch traps. For use in salt water only.

(A) Perch traps may be used only for taking non-game fish.

(B) It is unlawful to fish a perch trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-a-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-b-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-c-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(iii) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 10 days after date set out.

(13) [~~(12)~~] Pole and line.

(A) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(B) Game and non-game fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take non-game fish.

(C) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(14) [~~(13)~~] Purse seine [~~(net)~~].

(A) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore.

(B) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(C) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(15) [~~(14)~~] Sail line. For use in salt water only.

(A) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(B) Line length shall not exceed 1,800 feet from the reel to the sail.

(C) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(D) No float on the line may be more than 200 feet from the sail.

(E) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(F) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(G) There is no hook spacing requirement for sail lines.

(H) No more than one sail line may be used per fisherman.

(I) Sail lines may not be used by the holder of a commercial fishing license.

(J) Sail lines must be attended at all times the line is fishing.

(K) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(16) [~~(15)~~] Sand pump. It is unlawful for any person to use a sand pump:

(A) that is not manually operated; or

(B) for commercial purposes.

(17) [~~(16)~~] Seine.

(A) Only non-game fish may be taken with a seine.

(B) It is unlawful to use a seine:

(i) which is not manually operated;

(ii) with mesh exceeding 1/2-inch square; or

(iii) that exceeds 20 feet in length.

(C) In salt water, non-game fish may be taken by seine for bait purposes only.

(18) [~~(17)~~] Shad trawl. For use in fresh water only.

(A) Only non-game fish may be taken with a shad trawl.

(B) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(C) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(19) [~~(18)~~] Spear. Only non-game fish may be taken with a spear.

(20) [~~(19)~~] Spear gun. Only non-game fish may be taken with spear gun.

(21) [~~(20)~~] Throwline. For use in fresh water only.

(A) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(B) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(C) It is unlawful to use a throwline that is not equipped with a gear tag. A gear tag is valid for 10 days after the date it is set out.

(22) [~~(21)~~] Trotline.

(A) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(B) It is unlawful to use a trotline:

(i) with a mainline length exceeding 600 feet;

(ii) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 10 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(iii) with hook interval less than three horizontal feet;

(iv) with metallic stakes; or

(v) with the main fishing line and attached hooks and stagings above the water's surface.

(C) In fresh water, it is unlawful to use a trotline:

(i) with more than 50 hooks;

(ii) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(D) In salt water:

(i) it is unlawful to use a trotline:

(I) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(II) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(III) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(IV) baited with other than natural bait, except sail lines;

(V) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(VI) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(ii) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When smallcraft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(iii) It is unlawful to fish for commercial purposes with:

(I) more than 20 trotlines at one time;

(II) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(III) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(IV) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license

plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(iv) It is unlawful to fish for non-commercial purposes with:

(I) more than 1 trotline at any time; or

(II) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(23) [~~(22)~~] Umbrella net.

(A) Only non-game fish may be taken with an umbrella net.

(B) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

§57.976. Importation of Aquatic Animal Life [~~Possession of Wildlife Resource; Importation~~].

[~~(a) Possession of wildlife resource. A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the aquatic resource. An wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed. The wildlife resource document must contain the following information:~~]

[~~(1) the name, signature, address, and fishing license number, as required, of the person who killed or caught the wildlife resource;~~]

[~~(2) the name of the person receiving the wildlife resource;~~]

[~~(3) a description of the wildlife resource (number and type of species or parts);~~]

[~~(4) the date the wildlife resource was killed or caught; and~~]

[~~(5) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).~~]

[~~(b) Importation.~~]

(a) [~~(1)~~] No person may import into this state or possess an aquatic wildlife resource taken outside this state, unless the person possessing the aquatic wildlife resource produces upon demand by a game warden a valid fishing, or other applicable license, stamp, tag, permit, or document for the state or country in which the wildlife resource was legally taken.

(b) [~~(2)~~] A person possessing a wildlife resource under this section must produce upon demand by a game warden a valid driver's license or personal identification certificate.

(c) [~~(3)~~] Any person may possess a wildlife resource killed outside this state that is listed in this state as threatened or endangered, provided the person possesses proof that the animal or bird was lawfully killed.

(d) No person in this state may possess aquatic animal life taken in the Exclusive Economic Zone:

(1) during a closed season provided by federal law;

(2) within a protected length limit or in excess of the daily bag limit established by federal law;

(3) with any gear or device prohibited by federal law; or

(4) without a license or permit required by federal law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
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♦ ♦ ♦

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981, §57.982

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 61 and 67.

§57.981. Bag, Possession, and Length Limits.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's residence and is finally processed.

(b) [~~(a)~~] The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(c) [~~(b)~~] There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game and non-game fish except as otherwise provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt

from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document (WRD) from the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed WRD document shall accompany the wildlife resource until it reaches the possessor's residence and is finally processed. The WRD must contain the following information:

(A) the name, signature, address, and fishing license number, as required of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts); and

(D) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(5) [~~(4)~~] Except as provided in subsection (d) [~~(c)~~] of this section, the statewide daily bag and length limits shall be as follows.
Figure: 31 TAC §57.981(c)(5)
[~~Figure: 31 TAC §57.981(b)(4)~~]

(d) [~~(c)~~] Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.
Figure: 31 TAC §57.981(d)(1)
[~~Figure: 31 TAC §57.981(c)(1)~~]

(2) Saltwater species.
Figure: 31 TAC §57.981(d)(2)
[~~Figure: 31 TAC §57.981(c)(2)~~]

§57.982. Crabs and Ghost Shrimp.

(a) - (b) (No change.)

(c) It is unlawful to:

(1) - (5) (No change.)

(6) possess more than 20 ghost shrimp *(Callichiris islagrande* [~~Callichiris islagrande, formerly Callianassa islagrande~~]) per person.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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♦ ♦ ♦

DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992, §57.996

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 61 and 67.

§57.992. Bag, Possession, and Length Limits.

(a) The possession limit applies [~~does not apply~~] to all aquatic animal life [~~fish~~] in the possession of or stored by any person, but does not apply to aquatic animal life that has been lawfully obtained and for which a person possesses [~~who has~~] an invoice or sales ticket showing the name and address of the seller or person from whom the aquatic animal life was obtained, the amount of aquatic animal life by number and species[~~, number of fish by species~~], date of the sale, and any other information required on a sales ticket or invoice.

(b) There are no bag, possession, or length limits on game fish, [~~or~~] non-game fish, or shellfish, except as otherwise provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game fish, [~~and~~] non-game fish, and shellfish, except as provided in this subchapter.

(2) - (3) (No change.)

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.
Figure: 31 TAC §57.992(b)(4)

§57.996. Crabs and Ghost Shrimp.

(a) Bag, possession and size limits.

(1) - (2) (No change.)

(3) It is unlawful to:

(A) - (E) (No change.)

(F) possess more than 20 ghost shrimp *(Callichiris islagrande)* for commercial purposes [~~(Callichiris islagrande, formerly Callianassa islagrande) per person~~].

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

The Texas Parks and Wildlife Department proposes amendments to §§58.10, 58.22, 58.23, 58.30, 58.40, 58.50, 58.60, 58.160, 58.202, and 58.301, concerning Oysters, Shrimp, and Finfish. The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Subchapter A. Statewide Oyster Fishery Proclamation

The proposed amendment to §58.10, concerning Application, would correct a spelling error.

The proposed amendment to §58.22, concerning Commercial Fishing, would add new subsection (c) to repeat the season dates and lawful hours for oystering, which are established under §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment to §58.23, concerning Non-commercial (Recreational) Fishing, would add new subsection (c) to repeat the season dates and lawful hours for oystering, which are established under §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment to §58.30, concerning Private Oyster Leases, would alter subsection (b)(3) to update the name of the state agency program responsible for shellfish sanitation, update subsection (d)(2) to reflect the fact that Parks and Wildlife Code, §76.036, allows "other permanent markers" to be used in lieu of buoys for purposes of marking the boundaries of a private oyster lease, and remove subsection (d)(6)(C) because all fee values are contained in §53.15(h)(6).

The proposed amendment to §58.40, concerning Oyster Transplant Permits, would insert language in subsection (b)(2) and (3) to clarify that the time span established for submitting transplant application is to be measured in business days.

The proposed amendment to §58.50, concerning Oyster Harvest Permits, would insert language in subsection (b)(1) to clarify that the time span established for submitting oyster harvest applications is to be measured in business days and alter subsection (b)(3) to update the name of a state agency.

The proposed amendment to §58.60, concerning Transplant or Harvest Permit Cancellation, would alter subsection (a)(2) to update the name of a state agency.

Subchapter B. Statewide Shrimp Fishery Proclamation

The proposed amendment to §58.160, concerning Taking or Attempting to Take Shrimp (Shrimping)--General Rules, would remove the word "of" from subsection (e)(4)(B)(ii)(III) for purposes of grammatical correctness.

Subchapter C. Statewide Crab Fishery Proclamation

The proposed amendment to §58.202, concerning Definitions, would update the scientific names of crab families in paragraph (2) to reflect changes in the scientific taxonomy.

Subchapter D. Finfish Fishery Proclamation

The proposed amendment to §58.301, concerning Finfish License Management Program, would retitle the section to make a more intuitive correlation to the contents of the section.

Paul Hammerschmidt, Special Projects Director, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Hammerschmidt also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clearer, more easily understood rules that enhance compliance and enforcement.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rules make nonsubstantive changes, the department has determined that the proposed amendments will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 (e-mail: paul.hammerschidt@tpwd.state.tx.us).

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §§58.10, 58.22, 58.23, 58.30, 58.40, 58.50, 58.60

The amendments are proposed under the authority of Parks and Wildlife Code, §76.301, which authorizes the commission to reg-

ulate the time, places, conditions, and means and manners of taking oysters.

The proposed amendments affect Parks and Wildlife Code, Chapter 76.

§58.10. Application.

(a) This subchapter applies to the taking, attempting to take, possession, purchase, and sale of oyster resources in the salt waters of Texas. It carries out the commission's [~~Commmission's~~] rulemaking authority granted by the legislature in Parks and Wildlife Code, Chapter 76. The law covering the taking, attempting to take, possession, purchase, and sale of oyster resources in the salt waters of Texas is set forth in both Parks and Wildlife Code, Chapter 76 and this subchapter whereby the provisions of this subchapter prevail over any conflicting provision of Parks and Wildlife Code, Chapter 76 to the extent of the conflict as set forth in Parks and Wildlife Code, §76.301.

(b) (No change.)

§58.22. Commercial Fishing.

(a) - (b) (No change.)

(c) Seasons and Times.

(1) The open season extends from November 1 of one year through April 30 of the following year.

(2) Legal oystering hours--sunrise to 3:30 p.m.

(d) [~~(c)~~] Possession Limits. It is unlawful to take in one day, for pay or the purpose of sale, barter, or exchange, or any other commercial purpose, or to have on board any licensed commercial oyster boat more than:

(1) 50 sacks of culled oysters of legal size; or

(2) 6 sacks of unculled oysters while on the reef.

(e) [~~(d)~~] Harvester/Shell Recovery Tag. A person who harvests oysters from Texas waters for commercial purposes shall, immediately upon harvest, attach a properly executed harvester/shell recovery tag to the outside of the sack in which the oysters are placed.

(1) A Harvester/Shell Recovery Tag is properly executed when all required information has been entered on the tag.

(2) The tag must be placed on the outside of the sack immediately upon filling, prior to unloading, and remain until the sack is empty or retagged and thereafter kept on file for 90 days.

(3) The appropriate harvester/shell recovery tag (green or white) must be affixed to the sack regardless of the season or whether the requirements of 25 TAC §241.57 (relating to Molluscan Shellfish Harvesting and Handling) apply.

(f) [~~(e)~~] Reporting Requirements. A dealer who purchases or receives oysters directly from any person other than a licensed dealer must file a report with the department each month as prescribed under Parks and Wildlife Code, §66.019(c).

§58.23. Non-commercial (Recreational) Fishing.

(a) - (b) (No change.)

(c) Seasons and Times.

(1) The open season extends from November 1 of one year through April 30 of the following year.

(2) Legal oystering hours--sunrise to 3:30 p.m.

(d) [~~(c)~~] Possession Limit. It is unlawful for a person to take in one day or possess, more than two sacks of legal sized oysters.

(e) [~~(d)~~] Prohibition of Sale. It is unlawful to sell oysters taken without a valid commercial oyster fishing license.

§58.30. Private Oyster Leases.

(a) (No change.)

(b) Application For Oyster Lease.

(1) - (2) (No change.)

(3) Each application shall contain:

(A) - (C) (No change.)

(D) signed letters each from the U.S. Army Corps of Engineers, General Land Office, and the Seafood and Aquatic Life Group [~~Safety Division~~] of the Texas Department of State Health Services indicating approval for the proposed lease site.

(4) (No change.)

(c) (No change.)

(d) Approved Lease Procedures for Applicant.

(1) (No change.)

(2) The applicant shall mark the boundaries of the lease with buoys or other permanent markers at the time of the final survey and maintain buoys or other permanent markers until lease termination. Supplemental markers may be required along the lease boundaries if one corner marker is not clearly visible from another corner marker.

(A) All marker buoys or other permanent markers must be:

(i) - (iii) (No change.)

(iv) marked with the lease number (Buoys or other permanent markers common to two or more leases must be marked with all lease numbers);

(v) - (vi) (No change.)

(B) (No change.)

(C) If replacement of buoys or other permanent markers is necessary, original latitude and longitude coordinates of the final survey must be used to relocate markers.

(3) - (5) (No change.)

(6) Lease Renewal.

(A) - (B) (No change.)

~~[(C) A payment of $200 will be due upon renewal of the lease as prescribed in Parks and Wildlife Code, §76.018.]~~

(C) [~~(D)~~] The holder of a renewed certificate of location shall be responsible for having the lease resurveyed by a registered surveyor who will provide the department with survey notes and a plat of the lease showing:

(i) the location of the lease in relation to state land tract boundaries; and

(ii) latitude and longitude coordinates for all lease markers.

(D) [~~(E)~~] The survey will be conducted and provided to the department within one year of the lease renewal;

(7) - (8) (No change.)

§58.40. Oyster Transplant Permits.

(a) (No change.)

(b) Oyster Transplant Application.

(1) (No change.)

(2) Written applications for transplant permits must be received by the department two business days prior to the beginning of transplanting operations.

(3) Written applications for transplant permit amendments must be received by the department at least two business days prior to the desired effective date of the amendment.

(4) - (9) (No change.)

(c) (No change.)

(d) Transplant Restrictions.

(1) - (2) (No change.)

(3) Oysters may not normally be taken for the purpose of transplanting from the following areas:

(A) - (C) (No change.)

(D) areas declared to be unsuitable for transplanting by the Texas Department of State Health Services because of the presence of persistent chemicals or diseases that might be dangerous to public health.

(4) - (9) (No change.)

(e) (No change.)

§58.50. Oyster Harvest Permits.

(a) (No change.)

(b) Oyster Harvest Application.

(1) Written application for a harvest permit must be received two business days prior to the requested harvest dates and include the following:

(A) - (D) (No change.)

(2) (No change.)

(3) A harvest permit will not be valid until 15 days after expiration of a transplant permit for the same lease or leases adjacent thereto and with approval of the Texas Department of State Health Services.

(4) (No change.)

(c) - (e) (No change.)

§58.60. Transplant or Harvest Permit Cancellation.

(a) Violations of the transplanting or harvesting procedures include, but are not limited to, the following:

(1) (No change.)

(2) harvesting oysters from restricted or prohibited areas as designated by the Texas Department of State Health Services;

(3) - (10) (No change.)

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §58.160

The amendments are proposed under the authority of Parks and Wildlife Code, §77.007, which authorizes the commission to regulate the time, places, conditions, and means and manners of catching shrimp.

The proposed amendments affect Parks and Wildlife Code, Chapter 77.

§58.160. Taking or Attempting to Take Shrimp (Shrimping)--General Rules.

(a) - (d) (No change.)

(e) Bycatch Reduction Device (BRD) requirements.

(1) - (3) (No change.)

(4) Approved BRDs:

(A) (No change.)

(B) In inside waters:

(i) (No change.)

(ii) An extended funnel device similar to "Jones/Davis", "large mesh" constructed and installed as follows:

(I) - (II) (No change.)

(III) Funnel. The funnel is constructed [~~of~~] with a mesh size of 6-7/8 inches over 5 stretched meshes, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches long and the opposite side of the funnel extends an additional 20 to 22 inches. The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(IV) - (V) (No change.)

(iii) (No change.)

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. STATEWIDE CRAB FISHERY PROCLAMATION

31 TAC §58.202

The amendments are proposed under the authority of Parks and Wildlife Code, §78.006, which authorizes the commission to regulate the time, places, conditions, and means and manners of taking clams.

The proposed amendments affect Parks and Wildlife Code, Chapter 78.

§58.202. Definitions.

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Crab--All species in the families Portunidae and Menippidae [~~Xanthidae~~].

(3) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. FINFISH FISHERY PROCLAMATION

31 TAC §58.301

The amendment is proposed under the authority of Parks and Wildlife Code, §47.071, which requires department to implement a finfish license management program.

The proposed amendment affects Parks and Wildlife Code, Chapter 47.

§58.301. Finfish License Management Program [~~Delegation of Authority~~].

Delegation of Authority. To the fullest extent allowed by law, the commission delegates power and authority to the executive director to administer the Finfish License Management Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department (the department or TPWD) proposes the repeal of §65.30, amendments to §§65.3, 65.34, and 65.40, and new §65.30, concerning the Statewide Hunting Proclamation.

The proposed repeal of §65.30, concerning Pronghorn Antelope Permit, is necessary to propose new §65.30.

The proposed amendment to §65.3, concerning Definitions, would remove the definition of "agent" and add a definition of "landowner." Under current rule, the term "agent" is defined as "a person authorized to act on behalf of the landowner," but the term "landowner" is not defined. The proposed amendment would define the term "landowner" as "any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent." The intent of the proposed amendment is to make clear to whom the terms "landowner" and "agent" refer for purposes of compliance and enforcement.

Proposed new §65.30, concerning Pronghorn Antelope Permit, would set forth the method the department utilizes to determine and allot the harvest of pronghorn antelope and the places and conditions under which permits issued under the section are valid. Under Parks and Wildlife Code, §61.057, no person may hunt an antelope without first having acquired an antelope permit issued by the department. Under Parks and Wildlife Code, §61.051, the department is required to conduct scientific studies and investigations of game animals to determine, among other things, supply, sex ratios, and the effects of any factors or conditions causing increases or decreases in supply. Under Parks and Wildlife Code, §61.052, the commission is required to regulate the means, methods, places, and periods of time when it is lawful to hunt or possess game animals. In general, the proposed new section preserves the contents of current §65.30 and makes conforming changes necessary to accommodate the proposed amendment to §65.40, which would allow hunting of buck pronghorn antelope in certain places by means of a permit obtained directly from the department rather than from a landowner.

The proposed amendment to §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer, would extend the period of validity of MLDPs for mule deer to the last Sunday in January. The MLDP permit program was expanded to include mule deer in 2005. Unlike the MLDP program for white-tailed deer, which allows hunting from October until February, the

mule deer MLDP permit validity was conservatively established to run concurrently with the season for white-tailed deer (the first Sunday in November to the first Sunday in January). Since its inauguration, the program has steadily grown. The number of cooperators has increased by nearly 350% and the acreage under management has nearly tripled. In recent years, the department has been approached by landowners and land managers with the idea of extending the period of validity. The department conducted a significant outreach effort over the past year and has determined that there is support for an extension of the mule deer MLDP period of validity.

The proposed amendment to §65.40 would implement an experimental season for the take of buck pronghorn antelope in certain areas of the state. Under Parks and Wildlife Code, §61.057, no person may hunt an antelope without first having acquired an antelope permit issued by the department. Under Parks and Wildlife Code, §61.051, the department is required to conduct scientific studies and investigations of game animals to determine, among other things, supply, sex ratios, and the effects of any factors or conditions causing increases or decreases in supply. Under Parks and Wildlife Code, §61.052, the commission is required to regulate the means, methods, places, and periods of time when it is lawful to hunt or possess game animals. Under current rule, the take of all pronghorn antelope is by permit only. The department manages pronghorn antelope populations by the concept of the "herd unit." A herd unit is an area containing similar pronghorn densities (during the timeframe of population surveys) and habitats. Some herd units are bounded by natural or man-made barriers that prevent or inhibit immigration/emigration. Other herd units are bounded by man-made infrastructure that facilitates a descriptive boundary but does allow immigration/emigration. The department conducts population surveys and collects harvest data annually to determine the percentage of each herd unit that may be harvested each year without causing depletion or waste. Permits are then issued to landowners, who distribute them to hunters at their discretion. Over the last 10-15 years, pronghorn antelope populations in portions of the northern Panhandle have increased steadily and continue to expand their range. As a result, permit demand has increased and staff time accommodating that demand has increased accordingly. The proposed amendment would implement an experimental season in three herd units where staff believe that buck populations can sustain additional hunting pressure. The current bag limit and season length would be retained; however, no permits for buck pronghorn antelope would be issued to the landowners. Instead, the harvest of buck pronghorn antelope would be at the discretion of the landowner. In order to measure the impact of the experiment and to assist law enforcement personnel in identifying lawfully taken pronghorn antelope, the proposed amendment would require hunters to obtain a permit from the department and attach it to harvested bucks and present each harvested buck at a check station, if the department establishes check stations. The proposed amendment is intended to reduce the amount of time spent on permit issuance by staff, increase hunter opportunity, and provide greater convenience for landowners, hunters, and outfitters.

Mr. Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Wolf also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposal will not directly affect small businesses or micro-businesses. The proposal affects the regulation of recreational license privileges that allow individual persons to pursue and harvest mule deer and pronghorn antelope. The proposal would not directly regulate any business and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or require the purchase or modification of equipment or services by small businesses or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone or e-mail to Robert Macdonald, (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Comments also may be submitted via the department's website at http://www.tpwd.state.tx.us/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.30, 65.34

The amendments and new rule are proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex

of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments and new rule affect Parks and Wildlife Code, Chapters 42 and 61.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

~~[(1) Agent--A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term "landowner" also includes the landowner's agent.]~~

(1) [~~(2)~~] Alligator gig--A pole or staff equipped with at least one of the following:

(A) immovable prongs;

(B) two or more spring-loaded grasping arms; or

(C) a detachable head.

(2) [~~(3)~~] Alligator hide tag (hide tag)--A department-issued tag required by federal law pursuant to the Convention on International Trade in Endangered Species (CITES) to be affixed to all alligators taken in the state. All alligator hide tags issued by the department are CITES tags.

(3) [~~(4)~~] Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(4) [~~(5)~~] Antlerless deer--A deer having no hardened antler protruding through the skin.

(5) [~~(6)~~] Antler point--A projection that extends at least one inch from the edge of a main beam or another tine. The tip of a main beam is also a point.

(6) [~~(7)~~] Bait--Something used to lure any wildlife resource.

(7) [~~(8)~~] Baited area--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(8) [~~(9)~~] Bearded hen--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(9) [~~(10)~~] Buck deer--A deer having a hardened antler protruding through the skin.

(10) [~~(11)~~] Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(11) [~~(12)~~] Day--A 24-hour period of time that begins at midnight and ends at midnight.

(12) [~~(13)~~] Deer population data--Results derived from deer population surveys and/or from systematic data analysis of density or herd health indicators, such as browse surveys or other scientifically acceptable data, that function as direct or indirect indicators of population density.

(13) [~~(14)~~] Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes. For a deer or antelope carcass, the term includes the processing of the animal more than by quartering.

(14) [~~(15)~~] Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(15) [~~(16)~~] Gig--Any hand-held shaft with single or multiple points.

(16) Landowner--Any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent.

(17) Lawful archery equipment--Longbow, recurved bow, and compound bow.

(18) License year--The period of time for which an annual hunting license is valid.

(19) Muzzleloader--Any firearm that is loaded only through the muzzle.

(20) Permanent residence--One's domicile. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(21) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(22) Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(23) Spike-buck deer--A buck deer with no antler having more than one point.

(24) Unbranched antler--An antler having no more than one antler point.

(25) Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(26) Wildlife resources--Alligators, all game animals, and all game birds.

(27) Wounded deer--A deer leaving a blood trail.

§65.30. Pronghorn Antelope Permit.

(a) In all areas of the state other than those designated in §65.40(d) of this title (relating to Pronghorn Antelope: Open Seasons and Bag Limits), the department shall determine the number of pronghorn antelope to be harvested from a given tract of land and shall issue permits to the landowner, who may distribute the permits to hunters. A permit issued under this subsection is valid only on the tract of land for which it was issued.

(b) In the areas designated in §65.40(d) of this title, no person may hunt a doe pronghorn antelope without landowner-issued permit; however, a person may hunt buck pronghorn antelope without a landowner-issued permit, provided:

(1) permission of the landowner to hunt buck pronghorn antelope has been obtained; and

(2) the person has obtained a buck pronghorn antelope permit from the department or an authorized agent of the department.

(c) For the purposes of this section, 'tract of land' is a parcel or parcels of land under the same ownership within a single herd unit.

§65.34. Managed Lands Deer Permits (MLDP)--Mule Deer.

(a) - (b) (No change.)

(c) An MLDP issued under this section permits the take of antlerless and/or buck mule deer, as specified on the permit. An MLDP issued under this section is valid:

(1) - (2) (No change.)

(3) from the first Saturday in November through the last [~~first~~] Sunday in January, during which time any lawful means may be used.

(d) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201300527
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 389-4775

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31 TAC §65.30

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapters 42 and 61.

§65.30. Pronghorn Antelope Permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.40

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed, and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42.

The proposed amendment affects Parks and Wildlife Code, Chapters 42 and 61.

§65.40. Pronghorn Antelope: Open Seasons and Bag Limits.

(a) In all counties there is a general open season for pronghorn antelope for nine consecutive days beginning the Saturday nearest October 1, and the annual bag limit is one pronghorn antelope[~~, by permit only~~].

(b) A person who kills a pronghorn antelope shall immediately and legibly complete and attach a pronghorn antelope permit to the carcass, which shall remain attached until the carcass reaches a final destination.

(c) In any area of this state that is not within an area described in subsection (d) of this section, a person who hunts pronghorn antelope shall acquire the pronghorn antelope permit from the landowner of the property on which the hunting activity occurs.

(d) Within the boundaries of an area described in this subsection, no landowner-issued permit is required to hunt buck pronghorn antelope; however, no person may hunt a buck pronghorn antelope unless that person has obtained a buck pronghorn antelope permit from the department.

(1) Area 1. That portion of the state north of a line beginning at the intersection of U.S. Highway (U.S.) 87 and Farm to Market Road (F.M.) 281 in Hartley County; thence east along F.M. 281 to U.S. 287 in Moore County; thence north along U.S. 287 to F.M. 2014 in Sherman County; thence southwest along F.M. 2014 to South Cedar Street in the City of Stratford in Sherman County; thence northwest along South Cedar Street to U.S. 54 in Sherman County; thence southwest along U.S. 54 to Elks Road in the City of Dalhart in Dallam County; thence south along Elks Road to Ranch Road (R.R.) 297 in Dalhart, Dallam County; thence east along R.R. 297 to Rawlings Road/Robertson Road; thence south on Rawlings Road/Robertson Road to U.S. 87 in Hartley County; thence south along U.S. 87 to F.M. 281 in Hartley County.

(2) Area 2. That portion of the state south of a line beginning at the intersection of U.S. 87 and U.S. 385 in Hartley County; thence east along U.S. 87 to S. Twichell Ave. in the City of Dumas in Moore County; thence south along S. Twichell Ave. to W. 16th St.; thence eastward along W. 16th St. to the first unnamed dirt road; thence south and then east along the unnamed dirt road to S. Dumas Ave./U.S. 87/287; thence south along S. Dumas Ave./U.S. 87/287 to State Highway (S.H.) 354; thence west along S.H. 354 to Alabama Ave. in the

City of Channing in Hartley County, thence north along Alabama Ave. to E. 4th St.; thence west along E. 4th St. to U.S. 385; thence north along U.S. 385 to the intersection of U.S. 385 and U.S. 87.

(3) Area 3. That portion of the state north of a line beginning at the intersection of U.S. 70 and S.H. 171 in Gray County; thence southeast along S.H. 171 to U.S. 60 in Gray County; thence northeast along U.S. 60 to F.M. 282 in Roberts County; thence west along F.M. 282 to F.M. 283 in Roberts County; thence northwest along F.M. 283 to U.S. 70 in Roberts County; thence south along U.S. 70 in Roberts County to S.H. 171 in Gray County.

(e) The department may establish mandatory check stations in the areas described in subsection (d) of this section. If check stations have been established, a person who kills a buck pronghorn antelope or the person's representative must present the entire, intact head at a check station within 24 hours of take.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to §§65.107, 65.131, and 65.375, concerning Chapter 65, Wildlife. The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Subchapter C. Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds

The proposed amendment to §65.107, concerning Permit Application and Processing, would alter subsection (b)(3)(A) to update the title of an agency manager.

Subchapter D. Deer Management Permit (DMP)

The proposed amendment to §65.131, concerning Deer Management Permit (DMP), would alter subsection (d)(3)(A) to update the title of an agency manager.

Subchapter Q. Statewide Fur-bearing Animal Proclamation

The proposed amendment to §65.375, concerning Open Seasons; Means and Methods, would remove the phrase "conibear-style" and replace it with the phrase "body grip." The term "conibear" is trademarked and must be replaced with a generic descriptor.

Matt Wagner, Wildlife Division Deputy Director, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Wagner also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clearer, more accurate rules.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose record-keeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rules make no nonsubstantive changes, the department has determined that the proposed amendments will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Matt Wagner, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4778 (e-mail: matt.wagner@tpwd.state.tx.us).

SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.107

The amendment is proposed under the authority of Parks and Wildlife Code, §43.061(g), which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds under this subchapter.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter E.

§65.107. Permit Application and Processing.

(a) (No change.)

(b) Review. An applicant for a permit under this subchapter may request a review of a decision of the department to deny issuance or delay processing of a permit.

(1) - (2) (No change.)

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Natural Resources [~~Operations~~], or his or her designee;

(B) the Director of the Wildlife Division; and

(C) the Big Game Program Director.

(4) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §65.131

The amendment is proposed under the authority of Parks and Wildlife Code, §43.603, which stipulates that a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter R, is subject to conditions established by the commission.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter R.

§65.131. Deer Management Permit (DMP).

(a) - (c) (No change.)

(d) An applicant for a permit under this subchapter may request that a decision by the department to deny issuance or delay processing of a permit or permit renewal be reviewed.

(1) - (2) (No change.)

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Natural Resources [~~Operations~~] (or his or her designee);

(B) the Director of the Wildlife Division; and

(C) the Big Game Program Director.

(4) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

31 TAC §65.375

The amendment is proposed under the authority of Parks and Wildlife Code, §71.002, which authorizes the commission to provide for the means, methods, and manner that are, and places in which it is, lawful to take or possess fur-bearing animals, pelts, or carcasses.

The proposed amendment affects Parks and Wildlife Code, Chapter 71.

§65.375. Open Seasons; Means and Methods.

(a) - (b) (No change.)

(c) Means and methods.

(1) Only the following means and methods are legal for taking fur-bearing animals:

(A) (No change.)

(B) steel foothold and body-gripping [~~conibear-style~~] traps;

(C) - (I) (No change.)

(2) Exceptions. No person may:

(A) take fur-bearing animals with foothold or body-gripping [~~conibear-style~~] traps, except during the open season for commercial harvest or as provided in §65.381 of this title (relating to Nuisance Fur-bearing Animals);

(B) set foothold or body-gripping [~~conibear-style~~] traps within 400 yards of any school;

(C) (No change.)

(D) use a body-gripping [~~conibear-style~~] trap with a diagonal opening dimension greater than ten inches set on land or in less than six inches of water;

(E) use snares, steel foothold traps, body-gripping [~~conibear-style~~] traps, and live or box traps unless each trap is examined at least every 36 hours; or

(F) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER W. SPECIAL PERMITS

31 TAC §65.905

The Texas Parks and Wildlife Department proposes new §65.905, concerning Interstate Transport of Deer through Texas.

Proposed new §65.905 would stipulate the conditions under which persons may possess white-tailed or mule deer in Texas without a permit issued by the department under Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, or R.

The provisions of 31 TAC Chapter 65, Subchapter T govern the possession of deer under a deer breeder permit. Under that subchapter, §65.602, no person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R. Further, also under Subchapter T, §65.611(f), no person in Texas may possess a deer acquired from an out-of-state source or import or attempt to import deer from an out-of-state source. The latter rule was promulgated in 2005 to address the threat to wild and farmed deer in Texas posed by Chronic Wasting Disease (CWD). In 2010, the rule was amended to clarify that it was also intended to prevent the introduction or spread of other diseases, including bluetongue virus, Epizootic Hemorrhagic Disease Virus, Malignant Catarrhal Fever, and Adenovirus Hemorrhagic Disease published in the January 8, 2010, issue of the *Texas Register* (35 TexReg 252). The department on several occasions has refused to allow the transportation of captive cervids through Texas on the basis of protecting the state's wild and farmed deer populations from disease.

Recent federal rulemaking has created a federal CWD-management infrastructure that has the consequence of allowing the interstate transport of captive cervids by persons who meet federal herd-certification requirements. The federal action, which is already in effect published in the *Federal Register* (77 FR 35542 - 35571), preempts the department's authority to close its borders to the transport of farmed cervids through the state. For this reason, it is necessary for the department to amend the current rules to allow the interstate transport of captive cervids through Texas by persons who are allowed to do so under federal law. However, because the department cannot disregard the potential threat to native and farmed deer in the state posed by deer entering the state from other states, the department believes it is prudent to promulgate rules that require specific actions to be undertaken by persons who desire to transport deer through Texas.

Proposed new §65.905 would set forth the requirements a person must meet in order to transport or possess deer in Texas without a permit issued by the department. The proposed new rule would apply only to the extent that department rules regarding the importation and/or transport through the state of white-tailed and mule deer not possessed under a permit issued by the department are preempted under the provisions of 9 CFR §81.5. It is the intent of the department to allow the entry and transport through Texas only those deer that are lawfully qualified for interstate transport under federal law and to deny entry and transport to all other deer.

Proposed new §65.905(1)(A) - (E) would require a person transporting deer through Texas under the proposed rule to physically possess a valid certificate of veterinary inspection attesting to the fact that the deer in possession meet the herd certification requirements of the United States Department of Agriculture for interstate transportation of captive cervids. The department has determined that is prudent to require persons who transport deer through the state pursuant to authority of federal regulations to possess proof that the deer in fact meet the federal standards for interstate transport. This proof would consist of the certificate of veterinary inspection issued by the Animal and Plant Inspection Service (APHIS) of the U.S. Department of Agriculture. The proposed new paragraph also would require deer transported through Texas to be confined at all times in a sealed vehicle and would prohibit both the release of deer in Texas and the commingling of deer with any other susceptible species while in Texas. The optimum method of reducing the disease threat posed by deer originating from an out-of-state source (absent a prohibition on entry) is to require confinement and prohibit contact with other animals. In order to verify that deer are confined at all times, the proposed rule would require trailers and/vehicles used to confine deer to be sealed with a mechanical security seal. Such seals are common in the trucking, container, and rail freight businesses. Proposed new paragraph (1)(F) would require a person to notify the department and furnish certain information regarding dates, vehicles and trailers, cargo, seal and personnel identification, and route not less than 24 nor more than 36 hours in advance of entering the state while in possession of deer. The department considers that optimum vigilance in protecting the state's wildlife resources is preserved when the department has certain specific prior knowledge that deer from an out-of-state source are to be transported through the state. By requiring particular information regarding the date, cargo, route, description of vehicles and trailers, seals, and on-site personnel, the department is able to quickly determine the status of any deer encountered in the act of transport.

Proposed new paragraph (2) would require a person in possession of deer under the provisions of the section to possess an authorization number issued by the department at all times the person is in Texas while in possession of deer without a permit. The provision is necessary to provide a method for validating that a person in fact complied with the notification requirements of paragraph (1).

Proposed new paragraph (3) would require persons transporting deer through the state under the provisions of the section to immediately notify the department in the event that any deer escape confinement while in the state of Texas, a seal on a trailer or vehicle used to transport deer under the provisions of this section is removed for any reason, or any condition or event occurs that causes the person in possession of deer to alter the route being taken or the schedule reported to the department under paragraph (1). The department considers that the possibility of unplanned events exists. As a result, it is necessary to notify the department when such unplanned events occur.

Mitch Lockwood, Big Game Program Director, has determined that for each of the first five years that the proposed new rule is in effect there will be no fiscal implications for the department as a result of enforcing or administering the rule. The rule will be enforced and administered by existing personnel.

Mr. Lockwood also has determined that for each of the first five years that the proposed new rule is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the protection of native and farmed deer for enjoyment by the public.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an ad-

verse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that there will be minimal adverse economic impacts on small businesses or micro-businesses as a result of the proposed new rule, consisting of the cost of purchasing mechanical seals for tailgates and doors on trailers and vehicles used to confine deer. The department has no method for estimating how many small or micro-businesses might be affected by the proposed new rule, because the Texas border has been closed to the importation of white-tailed and mule deer for any purpose for over 10 years. However, the cost of most mechanical security seals is less than $5 per seal. Thus, the adverse economic impact to small and micro-businesses is estimated to be approximately $5 per tailgate or door.

The department considered several alternatives to the proposed new rule that would lessen or eliminate the negative economic impacts to small and micro-businesses and still achieve the purpose of the rule. The department considered elimination of the sealed-trailer requirement. This alternative was rejected because the department must have a method of determining that a trailer or vehicle used to confine deer has not been opened while in or moving through the state. The department also considered not promulgating the rule at all. This alternative was rejected because the department has an affirmative duty to protect the wildlife resources of the state. The department also considered, in lieu of the proposed new rule, a rule that would require department personnel to escort shipments of deer to ensure that deer were not released or commingled. This alternative was rejected because the department would be required to reallocate resources from other department operations to execute such an alternative. The alternative selected is believed by the department to establish appropriate safeguards without negatively impacting department operations.

The proposed new rule will result in negative economic impacts to persons required to comply, namely the approximately $5 per tailgate or door for the purchase of security seals.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Texas Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule, as the rule would not affect private real property.

Comments on the proposed rule may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4363; e-mail: mitch.lockwood@tpwd.state.tx.us.

The new rule is proposed under Parks and Wildlife Code, §61.021, which prohibits the possession of a game animal except by proclamation of the commission; and §61.052, which requires the commission to regulate the periods of time when it is lawful to possess game animals and the means, methods, and places in which it is lawful to possess game animals.

The proposed new rule affects Parks and Wildlife Code, Chapter 61.

§65.905. Interstate Transport of Deer through Texas.

Only to the extent that department rules regarding the importation and/or transport through the state of white-tailed and mule deer not possessed under a permit issued by the department are preempted under the provisions of 9 CFR §81.5, this section shall apply.

(1) A person without a permit issued by the department may transit the state while in possession of live deer lawfully obtained in another state, provided:

(A) the person physically possesses a valid certificate of veterinary inspection attesting to the fact that the deer in possession meet the herd certification requirements of the United States Department of Agriculture for interstate transportation of captive cervids;

(B) the deer are confined at all times;

(C) the deer are not released;

(D) the deer are not commingled with any other susceptible species, as defined in 4 TAC §40.3(a)(3) (relating to Herd Status Plans for Cervidae) while in the state of Texas;

(E) the doors and/or tailgate of any trailer or vehicle used to confine the deer during transport have been secured with a numbered or otherwise uniquely identified, tamper-resistant, mechanical security seal prior to entering the state of Texas, which seal(s) shall not be removed while the vehicle or trailer is in the state of Texas; and

(F) the person or the person's representative has contacted the department by notifying the Law Enforcement Communications Center in Austin not less than 24 nor more than 36 hours in advance of entering the state while in possession of deer and provided to the department:

(i) the dates and times that the person expects to enter and depart the state of Texas while in possession of deer without a permit issued by the department;

(ii) the specific points of origin and destination of each deer being transported;

(iii) the species and quantity of deer being transported;

(iv) the specific route the transport will follow, including the points at which the transporter will enter and depart the state of Texas;

(v) a description of the make, model, and color of all vehicles and trailers to be employed in the transport, including license plate numbers;

(vi) the unique identifier of the security seal(s) used on each vehicle and/or trailer used to confine deer; and

(vii) the name, drivers license number, and cell phone numbers of any person accompanying the deer while the deer are in the state of Texas.

(2) Upon receiving the information required under paragraph (1) of this section, the department will issue an authorization number to the person providing the information. It is an offense for any person to possess or transport deer through the state of Texas under the provisions of this section unless the person physically possesses a department-issued authorization number that is valid for the specific act of transport being conducted.

(3) A person transporting deer under the provisions of this section shall immediately notify the department in the event that:

(A) any deer escape confinement while in the state of Texas;

(B) a seal on a trailer or vehicle used to transport deer under the provisions of this section must be removed for any reason; or

(C) any condition or event occurs that causes the person in possession of deer to alter the route being taken or the schedule reported to the department under paragraph (1) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300531
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.11

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 425, Fire Service Instructors, §425.1, concerning Minimum Standards for Fire Service Instructor Certification; §425.3, concerning Minimum Standards for Fire Service Instructor I Certification; §425.5, concerning Minimum Standards for Fire Service Instructor II Certification; §425.7, concerning Minimum Standards for Fire Service Instructor III Certification; and §425.11, concerning International Fire Service Accreditation Congress Seal.

The purpose of the proposed amendments is to remove language requiring the completion of a field examiner course as a prerequisite to become certified as a Fire Service Instructor I; and to make grammatical corrections.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is to provide clear and concise rules regarding the requirements to obtain certification as a Fire Service Instructor I. There will be no effect on micro businesses, small businesses or persons required to comply with the amended sections as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.028, which provides the commission the authority to certify persons as qualified fire protection personnel instructors.

The proposed amendments implement Texas Government Code §419.008 and §419.028.

§425.1. Minimum Standards for Fire Service Instructor Certification.

(a) Training programs that are intended to satisfy the requirements for fire service instructor certification must meet the curriculum and competencies based upon NFPA 1041. All applicants for certification must meet the examination requirements of this section.

(b) Prior to being appointed to fire service instructor duties, all personnel must complete a commission [~~Commission~~] approved fire service instructor program and successfully pass the commission [~~Commission~~] examination pertaining to that curriculum.

(c) Personnel who receive probationary or temporary appointment to fire service instructor duties must be certified by the commission [~~Commission~~] within one year from the date of appointment to such position.

(d) An out-of-state, military, or federal instructor training program may be accepted by the commission [~~Commission~~] as meeting the training requirements for certification as a fire service instructor if the training has been submitted to the commission [~~Commission~~] for evaluation and found to be equivalent to or to exceed the commission [~~Commission~~] approved instructor course for that particular level of fire service instructor certification.

(e) An individual who holds a bachelor's degree or higher in education from a regionally accredited educational institution or a teaching certificate issued by the State Board for Educator Certification [~~Texas State Board of Education~~] or an associate's degree with twelve semester hours of education instructional courses is considered to have training equivalent to the commission's [~~Commission's~~] curriculum requirements for Instructor I, II and III training.

(f) Personnel holding any level of fire service instructor certification must comply with the continuing education requirements specified in §441.21 of this title (relating to Continuing Education for Fire Service Instructor).

§425.3. Minimum Standards for Fire Service Instructor I Certification.

In order to become certified as a Fire Service Instructor I an individual must:

(1) have a minimum of three years of experience (as defined in §421.5(43) of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor I or II or III; or

(3) have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the commission's [~~Commission's~~] Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(4) successfully pass the applicable commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). [~~; and~~]

[~~(5) have completed the field examiner orientation course as specified in Chapter 439 of this title.~~]

§425.5. Minimum Standards for Fire Service Instructor II Certification.

In order to become certified as a Fire Service Instructor II, an individual must:

(1) hold as a prerequisite a Fire Instructor I certification as defined in §425.3 of this title (relating to Minimum Standards for Fire Service Instructor I Certification); and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor II, or III; or

(4) have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the commission's [~~Commission's~~] Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(5) successfully pass the applicable commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

§425.7. Minimum Standards for Fire Service Instructor III Certification.

In order to become certified as a Fire Service Instructor III an individual must:

(1) hold as a prerequisite, a Fire Instructor II Certification as defined in §425.5 of this title (relating to Minimum Standards for Fire Service Instructor II Certification); and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title (relating to Definitions)) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor III; or

(4) have completed the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the commission's [~~Commission's~~] Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) or (e) of this title (relating to Minimum Standards for Fire Service Instructor Certification); and

(5) successfully pass the applicable commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and either

(A) hold as a prerequisite an advanced structural fire protection personnel certification, an advanced aircraft fire protection personnel certification, advanced marine fire protection personnel certification, advanced inspector certification, advanced fire investigator, or advanced arson investigator certification; or

(B) have 60 college hours from a regionally accredited educational institution; or

(C) hold an associate's degree from a regionally accredited educational institution.

§425.11. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals who held an equivalent Instructor I certification prior to March 1, 2006 or individuals completing a commission [~~Commission -~~] approved Fire Service Instructor I training program and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor I by making application to the commission [~~Commission~~] and paying the applicable fee.

(b) Individuals who held an equivalent Instructor II certification prior to March 1, 2006 or individuals holding an IFSAC Instructor I certification, completing a commission [~~Commission -~~] approved Fire Service Instructor II training program, and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor II by making application to the commission [~~Commission~~] and paying the applicable fee.

(c) Individuals who held an equivalent Instructor III certification prior to March 1, 2006 or individuals holding an IFSAC Instructor II certification, completing a commission [~~Commission -~~] approved Fire Service Instructor III training program, and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor III by making application to the commission [~~Commission~~] and paying the applicable fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300539
Don Wilson
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 936-3813

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §§435.1, 435.3, 435.7, 435.11, 435.19, 435.25

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 435, Fire Fighter Safety, §435.1, concerning Protective Clothing; §435.3, concerning Self-Contained Breathing Apparatus; §435.7, concerning Fire Department Staffing Studies; §435.11, concerning Incident Management System (IMS); §435.19, concerning Enforcement of Commission Rules; and §435.25, concerning Courage to be Safe So Everyone Goes Home Program.

The purpose of the proposed amendments is to remove obsolete language and make other grammatical changes.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is to provide clear and concise rules regarding Fire Fighter Safety. There will be no effect on micro businesses, small businesses or persons required to comply with the amended sections as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.047, which provides the commission the authority to enforce minimum standards for protective clothing, self-contained breathing apparatus, and fire protection personnel operating at emergency incidents.

The proposed amendments implement Texas Government Code §419.008 and §419.047.

§435.1. Protective Clothing.

A regulated fire department shall:

(1) purchase, provide, and maintain a complete set of protective clothing for all fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists. A complete set of protective clothing shall consist of garments including bunker coats, bunker pants, boots, gloves, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;

(2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association suitable for the tasks the individual is expected to perform. The National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, rebuilt, or used protective clothing; and

(3) maintain and provide upon request by the commission [~~Commission~~], a departmental standard operating procedure regarding the use, selection, care, and maintenance of protective clothing which complies with NFPA 1851, Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles.

§435.3. Self-Contained Breathing Apparatus.

The employing entity shall:

(1) purchase, provide, and maintain a complete self-contained breathing apparatus for each on-duty fire protection personnel who engage in operations where IDLH atmospheres may be encountered, where the atmosphere is unknown or would be exposed to hazardous atmospheres from fire or other emergencies or where the potential for such exposure exists;

(2) ensure that all self-contained breathing apparatus used by fire protection personnel complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters;[~~.~~]

(A) the National Fire Protection Association standard applicable to a self-contained breathing apparatus is the standard in effect at the time the entity contracts for new, rebuilt, or used self-contained breathing apparatus;

(B) an entity may continue to use a self-contained breathing apparatus in use or contracted for before a change in the National Fire Protection Association standard, unless the commission [~~Commission~~] determines that the continued use of the self-contained breathing apparatus constitutes an undue risk to the wearer, in which case the commission [~~Commission~~] shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;

(3) develop an air quality program that complies with the most recent edition of the NFPA 1989 Standard on Breathing Air Quality for Emergency Services Respiratory Protection;

(4) maintain and supply upon request by the commission [~~Commission~~], records and reports documenting compliance with commission [~~Commission~~] requirements concerning self-contained breathing apparatus and breathing air. Records of all tests shall be made and the records shall be retained for a period of no less than three years;

(5) maintain and provide upon request by the commission [~~Commission~~], a departmental standard operating procedure regarding the use of self-contained breathing apparatus; and

(6) maintain and provide upon request by the commission [~~Commission~~], a department standard operating procedure regarding the selection, care, and maintenance of self-contained breathing apparatus that complies with the most recent edition of the NFPA 1852 Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA).

§435.7. Fire Department Staffing Studies.

(a) Section 419.022(a)(4) Texas Government Code provides that the commission may [~~"~~]on request, assist in performing staffing studies of fire departments[~~"~~]. Staffing studies must take into consideration all the objectives and missions of the fire department. [~~The commission does not have the resources or the staff to directly assist in performing the necessary tasks to perform a staffing study.~~] Many staffing studies have been developed that can be used to assist in evaluating the needs of a fire department.

(b) A city should ultimately decide on the level of fire protection it is willing to provide to its citizens. The city and fire department should, as a minimum, address the needs of prevention, investigation

and suppression as outlined in the appropriate National Fire Protection Association [~~NFPA~~] Standards. That decision should be based on facts, the safety of its citizens, and the safety of the fire fighters providing that protection.

(c) The commission will assist by maintaining information pertinent to fire department staffing. The information shall be maintained in the Ernest A. Emerson Fire Protection Resource Library at the commission [~~Texas Commission on Fire Protection~~]. Copies shall be made available, free of charge, to anyone requesting such information to the extent permitted by copyright laws.

§435.11. Incident Management System (IMS).

(a) The fire department shall develop, maintain and use an incident management system.

(b) The incident management system shall:

(1) include a written operating procedure for the management of emergency incidents;

(2) require that the IMS be used at all emergency incidents;

(3) require operations to be conducted in a manner that recognizes hazards and assists in the prevention of accidents and injuries;

(4) require that all fire protection personnel be trained in the use of the IMS; and

(5) require that the IMS be applied to all drills, exercises and all other situations that involve hazards similar to those encountered at an actual emergency.

(c) The IMS shall meet the requirements of the applicable sections of the NFPA [~~National Fire Protection Association~~] 1561, Standard on Fire Department Incident Management System.

(d) The commission [~~Commission~~] recommends departments follow the National Incident Management System (NIMS) when developing their incident management system.

§435.19. Enforcement of Commission Rules.

(a) The commission [~~Commission~~] shall enforce all commission [~~Commission~~] rules at any time, including, but not limited to, commission [~~Commission~~] investigations, fire department inspections, or upon receiving a written complaint from an identified person or entity of an alleged infraction of a commission [~~Commission~~] rule.

(b) The commission [~~Commission~~] shall not provide prior notification of an inspection to a fire department.

(c) Upon receipt of a signed complaint alleging a violation of a commission [~~Commission~~] rule, the commission [~~Commission~~] shall have 30 days to initiate an investigation and report back to the complainant its progress.

(d) Upon substantiating the validity of a written complaint, the commission [~~Commission~~] shall follow the procedures outlined in Texas Government Code, Chapter 419, §419.011(b) and (c).

§435.25. Courage to be Safe So Everyone Goes Home Program.

(a) In an effort to improve firefighter safety in the State of Texas, all regulated entities will ensure that the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program be completed as part of the continuing education required for certified fire protection personnel by December 1, 2015. Individuals will be credited with four hours of continuing education credit for completing this program.

(b) All regulated fire protection personnel must complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program prior to December 1, 2015.

(c) All fire protection personnel appointed after December 1, 2015 will be required to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program training within one year of appointment to a fire department.

(d) Departments will report the completion of training through the commission's [~~Commission~~] web based reporting system.

(e) Failure to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program before the required deadlines will be considered a violation of continuing education rules found in Chapter 441 of this title (relating to Continuing Education) [~~the Commission's Standards Manual~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2013.

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Don Wilson
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 936-3813

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 17. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 17, Preadmission Screening and Resident Review (PASRR), consisting of Subchapter A, concerning general provisions; Subchapter B, concerning screening, expedited admission, and resident review; Subchapter C, concerning responsibilities; and Subchapter D, concerning vendor payment.

BACKGROUND AND PURPOSE

The purpose of the new sections is to address issues identified by the Centers for Medicare and Medicaid Services (CMS) regarding the Preadmission Screening and Resident Review (PASRR) program and to redesign the PASRR program in general. In December 2009, the Health and Human Services Commission (HHSC) received a letter from CMS outlining areas in which the current PASRR program in Texas does not appear to meet federal requirements. Specifically, CMS cited three issues. First, PASRR Level II evaluations must include a recommendation of specific specialized services needed by an individual prior to admission to a nursing facility. Second, nursing facility staff must not perform PASRR Level II evaluations. Third, the state must describe its resident review processes, specifically the roles and responsibilities of the state mental health and intellectual disability authorities, when the individual has a significant change in status.

SECTION-BY-SECTION SUMMARY

Proposed new §17.101 describes the PASRR program, including references to the federal regulations requiring states to have a PASRR program.

Proposed new §17.102 consists of definitions of words and terms used in the chapter.

Proposed new §17.103 describes the fair hearing process available to individuals who do not agree with a PASRR determination.

Proposed new §17.104 describes circumstances under which an individual is not subject to the PASRR Level II evaluation process.

Proposed new §17.201 describes the preadmission screening process, including the responsibilities of a nursing facility and local authority when an individual seeking admission to a nursing facility is not admitted through the expedited admission process.

Proposed new §17.202 describes the expedited admission process, including the responsibilities of a nursing facility and local authority when an individual whose medical condition at admission meets the convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma criteria.

Proposed new §17.203 describes the resident review process, including circumstances that trigger a resident review and the responsibilities of a nursing facility and local authority.

Proposed new §17.301 describes documentation and notification responsibilities of an entity that refers an individual to a nursing facility.

Proposed new §17.302 describes the responsibilities of a nursing facility when responding to an individual's request for admission, including coordination with the local authority and the provision of specialized services.

Proposed new §17.303 describes the responsibilities of a local authority, including PASRR Level II evaluations, resident reviews, documentation requirements, time frames for completing tasks, and coordination requirements.

Proposed new §17.401 requires a local authority to complete a PASRR Level II evaluation before billing DADS. It also clarifies that the rate covers any travel necessary for conducting the evaluation; DADS does not pay any additional amounts for travel.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, there are foreseeable implications relating to costs or revenues of state government. There are no foreseeable implications relating to costs or revenues of local government.

The effect on state government for the first five years the proposed new sections are in effect is an estimated additional cost of $959,743 in fiscal year (FY) 2013; $3,780,719 in FY 2014; $3,776,960 in FY 2015; $3,776,960 in FY 2016; and $3,776,960 in FY 2017.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses, because local authorities are not small or micro-businesses and will be paid for the new requirement to conduct PASRR Level II evaluations.

PUBLIC BENEFIT AND COSTS

Carol Sloan, Interim DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is that the PASRR program will meet federal requirements.

Ms. Sloan anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jamie White at (512) 438-4481 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R002, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R002" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§17.101 - 17.104

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections affect Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§17.101. Description of PASRR.

(a) Preadmission Screening and Resident Review (PASRR) is a federally mandated program. Each state is required to comply with

Code of Federal Regulations, Title 42, Part 483, Subpart C, to ensure that any individual seeking admission into a Medicaid-certified nursing facility or currently residing in such a facility is screened and evaluated for mental illness, intellectual disability, and developmental disabilities.

(b) The purpose of the screening and evaluation is:

(1) to determine whether an individual identified as having mental illness, intellectual disability, or developmental disability needs nursing facility services;

(2) to identify alternate placement options when applicable; and

(3) to identify specialized services that may benefit the individual.

(c) A Medicaid-certified nursing facility must not admit an individual without a completed PASRR Level I screening form.

(d) If an individual is identified as having mental illness, intellectual disability, or developmental disability, a Medicaid certified nursing facility must not admit the individual without a complete PASRR Level II evaluation and determination except as allowed by this chapter.

§17.102. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) Admitting nursing facility--A nursing facility that certifies in the LTC Online Portal that it can provide or arrange for specialized services identified in an individual's specialized services plan and admits the individual.

(2) Alternate placement--Assistance provided to a nursing facility resident or an individual seeking admission to a nursing facility by a local authority service coordinator or local authority case manager to locate and secure services chosen by the resident or LAR that meet the resident's basic needs in a setting other than a nursing facility. The services include the identification of specific services and supports available through alternate resources for which the resident may be eligible and an explanation of the possible consequences of selecting an alternate service.

(3) Collateral contact--A source of information that is knowledgeable about an individual's situation and that supports or corroborates information provided by the individual. Communication with a collateral contact may be made in person, over the telephone, or by mail.

(4) Coma--A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(5) Comprehensive care plan--A nursing facility plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet a resident's needs and developed for the resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, consistent with a physician's prescribed plan of care, to assist a resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(6) Convalescent care--A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery that does not exceed 120 days.

(7) DADS--The Texas Department of Aging and Disability Services. A state agency that provides long-term services and supports for people who are aging and for people with intellectual and physical disabilities. DADS also licenses and regulates providers of these services. DADS is the state authority for intellectual and developmental disabilities for the purposes of the PASRR program.

(8) Dementia--A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the current revision of the International Classification of Diseases, Clinical Modification.

(9) Delirium--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(10) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency; and

(E) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(11) Disposition--The final residential placement of an individual in the PASRR program. The disposition changes if the individual makes any changes to the individual's residential location.

(12) DSHS--The Texas Department of State Health Services. A state agency that provides state-operated health care services including hospitals, health centers, and health agencies. DSHS is the state mental health authority for the purpose of the PASRR program.

(13) Emergency protective services--Services that are furnished by DADS or the Department of Family Protective Services (DFPS) to an elderly or disabled person who has been determined to be in a state of abuse, neglect, or exploitation if DADS or DFPS determines that the services are necessary to prevent the elderly or disabled person from returning to a state of abuse, neglect, or exploitation. These services may include case management, and arranging for psychiatric and health evaluations, home care, day care, social

services, health care, respite services, and other services consistent with this chapter.

(14) Exempted hospital discharge--A hospital discharge that occurs when a physician has certified that an individual who is suspected of having a mental illness or intellectual or developmental disability is likely to require less than 30 days of nursing facility services for the condition for which the individual was hospitalized.

(15) Expedited admission--A nursing facility admission that occurs when an individual is:

(A) suspected of having mental illness, intellectual disability, or developmental disability; and

(B) meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(16) Interdisciplinary team (IDT) meeting--A meeting of intellectual disability, developmental disability, or mental health professionals, paraprofessionals, and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services, including recommendations for whether the individual is best served in a facility or in a community setting.

(A) Team membership always includes:

(i) the individual;

(ii) the individual's LAR, if any; and

(iii) any person specified by the local authority, as appropriate, who is professionally qualified or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with intellectual disabilities, developmental disabilities, or mental illness.

(B) Other participants in IDT meetings may include:

(i) other concerned persons whose inclusion is requested by the individual or the LAR;

(ii) at the discretion of the local authority, persons who are directly involved in the delivery of services to individuals with intellectual disabilities, developmental disabilities or mental illness; and

(iii) if the individual is school eligible, representatives of the appropriate school district.

(17) Intellectual disability--Formerly referred to as mental retardation, as defined in the Code of Federal Regulations (CFR) Title 42 §483.102(b)(3).

(18) Legally authorized representative (LAR)--The parent of a minor child, the legal guardian, or the surrogate decision maker of an applicant or a resident of a nursing facility.

(19) Level I screening--The process of identifying an individual with an indication of mental illness, intellectual disability, or a developmental disability who requires a PASRR Level II evaluation.

(20) Local authority--An entity to which the Health and Human Services Commission delegates authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to individuals with mental illness, or intellectual or developmental disability in one or more local service areas.

(21) Long Term Care (LTC) Online Portal--A web-based application of the Texas Medicaid and Healthcare Partnership used by providers to submit forms, screenings, evaluations and the long term services and supports Medicaid identification section of the minimum data set (MDS) assessment.

(22) Minimum data set (MDS) assessment--A standardized collection of demographic and clinical information that describes an individual's overall condition. A licensed nursing facility in Texas is required to submit an MDS assessment for a resident admitted into the facility.

(23) Mental illness--Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(24) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code, Chapter 242.

(25) Ongoing services--A specialized service that has been approved for the following authorization period:

(A) 180 days for an individual with an intellectual or developmental disability; or

(B) 180 or 365 days for an individual with mental illness.

(26) PASRR--Preadmission screening and resident review.

(27) PASRR determination--A decision made by DADS, DSHS, or their designee in accordance with Chapter 19, Subchapter Y of this title (relating to Medical Necessity Determinations) whether an individual requires the level of care provided in a nursing facility and whether the individual has a need for specialized services, based on information in the PASRR Level II evaluation. A report documenting the determination is sent to the individual or LAR.

(28) PASRR Level II evaluation--A face-to-face evaluation performed by a local authority at the location of the referring entity or nursing facility to assess an individual's need for specialized services, alternate placement options for an individual, and the need for care in a nursing facility or other setting, such as an intermediate care facility for individuals with an intellectual disability or related conditions.

(29) Readmission--An individual who is readmitted to a nursing facility from a hospital to which the individual was transferred for the purpose of receiving care.

(30) Referring entity--The entity that refers an individual to a nursing facility, which includes a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(31) Resident--An individual who resides in a Medicaid-certified nursing facility and receives services provided by professional nursing personnel of the facility.

(32) Resident review--A process that determines if a resident with mental illness, intellectual disability or developmental disability requires:

(A) nursing facility services;

(B) specialized services; or

(C) alternate placement.

(33) Respite--Services provided on a short-term basis to an individual because of the absence of or the need for relief by an individual's unpaid caregiver.

(34) Selected nursing facility--A nursing facility identified by an individual, a referring entity, or a local authority as a potential care setting for an individual.

(35) Severe physical illness--An illness resulting in ventilator dependence or diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from specialized services.

(36) Specialized services--Additional support services that are identified through the PASRR Level II evaluation and determination process and are provided to individuals who are Medicaid eligible and have an intellectual disability, developmental disability, or mental illness.

(A) The following specialized services are available for individuals with intellectual or developmental disabilities:

(i) physical therapy, occupational therapy, and speech therapy, which require an evaluation by a licensed therapist;

(ii) customized adaptive aids, which require an evaluation by a physical therapist or occupational therapist; and

(iii) targeted case management, including service coordination, vocational training, and alternate placement coordination.

(B) The specialized services that are available for individuals with mental illness are defined in 25 TAC Chapter 412, Subchapter I (relating to MH Case Management) and 25 TAC Chapter 419, Subchapter L (relating to Mental Health Rehabilitative Services).

(37) Surrogate decision maker (SDM)--An actively involved family member of an individual who has been identified by an IDT as the SDM in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent on behalf of the individual.

(38) Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course. An individual's medical prognosis is documented by a physician's certification, which is kept in the individual's medical record maintained by a nursing facility.

§17.103. Fair Hearing Process.

(a) An individual, or an individual's LAR, responsible party, or SDM who is not in agreement with a PASRR determination that the individual does not require the nursing facility level of care may request a fair hearing to appeal the determination in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(1) If the hearing officer reverses the determination, a nursing facility may admit the individual immediately. If the individual meets all other eligibility requirements, the facility may receive vendor payments.

(2) If the hearing officer sustains the determination, the nursing facility must not admit the individual.

(b) An individual, or an individual's LAR, responsible party, or SDM who is not in agreement with a denial of specialized services may request a fair hearing to appeal the denial in accordance with 1 TAC Chapter 357, Subchapter A.

(1) If the hearing officer reverses the denial, the nursing facility may continue to provide the service as outlined in the original specialized services request.

(2) If the hearing officer sustains the denial, the nursing facility must not provide the service outlined in the original request.

§17.104. Exceptions to PASRR Level II Evaluations and Determinations.

(a) Except as provided in subsection (b) of this section, a nursing facility must not admit an individual who has not had a PASRR Level II evaluation and determination performed before admission.

(b) A nursing facility may admit an individual who has not had a PASRR Level II evaluation and evaluation performed if the individual:

(1) has a Level I screening that does not indicate that the individual has an intellectual disability, developmental disability, or mental illness;

(2) is admitted directly from a hospital after receiving acute inpatient care at the hospital and the individual was a resident of the nursing facility immediately before hospitalization;

(3) meets the following criteria:

(A) is admitted to any nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(B) requires nursing facility services for the condition for which the individual received care in the hospital; and

(C) is certified by an attending physician, before admission to the nursing facility, as likely to require less than 30 days of nursing facility services;

(4) has a terminal illness as defined for hospice purposes in Code of Federal Regulations, Title 42, §418.3; or

(5) has not had an interruption in continuous nursing facility residence other than for acute care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2013.

TRD-201300494
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 438-4162

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SUBCHAPTER B. SCREENING, EXPEDITED ADMISSION, AND RESIDENT REVIEW

40 TAC §§17.201 - 17.203

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license

and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections affect Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§17.201. Preadmission Screening Process.

(a) Except as provided in §17.301 of this chapter (relating to Referring Entity Responsibilities), a referring entity must:

(1) complete a Level I screening when an individual is seeking admission into a nursing facility;

(2) notify the local authority if an individual has an indication of mental illness, intellectual disability, or developmental disability and is seeking admission into a nursing facility; and

(3) provide a copy of the completed Level I screening form to the local authority for an individual who has an indication of mental illness, intellectual, or developmental disability.

(b) The local authority must:

(1) travel to the referring entity site within 72 hours after receiving notification from the referring entity;

(2) complete the PASRR Level II evaluation with the individual and review medical records to evaluate the individual; and

(3) enter the data from the Level I screening and PASRR Level II evaluation in the LTC Online Portal within seven calendar days after receiving notification from the referring entity, which documents the individual's:

(A) nursing facility options;

(B) alternate placement options; and

(C) recommended specialized services.

(c) The nursing facility identified on the LTC Online Portal must:

(1) check the LTC Online Portal for the Level I screening and PASRR Level II evaluation; and

(2) document in the LTC Online Portal whether the individual's needs can be met in the facility.

(d) The admitting nursing facility and the local authority must take the actions described in this subsection post admission.

(1) The nursing facility contacts the local authority to schedule an IDT meeting to discuss specialized services.

(2) The local authority and nursing facility participate in the IDT meeting.

(3) The nursing facility includes the specialized services agreed to by the individual or LAR in the comprehensive care plan.

(4) The nursing facility identifies the services it is responsible for providing in the LTC Online Portal.

(5) The nursing facility and local authority provide to the individual specialized services as agreed to by the IDT.

(e) In compliance with the 42 CFR §483.122, when a preadmission screening has not been completed prior to admission, federal financial participation (FFP) is available only for services furnished after the PASRR Level II Evaluation and determination has been completed and submitted in the LTC Online Portal.

§17.202. Expedited Admission Process.

(a) A referring entity must notify the nursing facility in the LTC Online Portal of an individual whose Level I screening and Expedited Admission Form indicate that the individual meets the convalescent care, terminal illness, severe physical illness or coma criteria, at which point the individual may be discharged from the referring entity to the nursing facility for care.

(1) The nursing facility must:

(A) validate the criteria for one of the categories listed above;

(B) enter the Level I screening and Expedited Admission Form in the LTC Online Portal;

(C) contact the local authority to request a PASRR Level II evaluation; and

(D) initiate admission activities.

(2) Within seven calendar days after receiving notification from the nursing facility, the local authority must:

(A) complete the PASRR Level II evaluation face to face with the individual;

(B) develop a list of recommended specialized services based on the PASRR Level II evaluation;

(C) document the discussion of alternate placement; and

(D) enter the PASRR Level II evaluation in the LTC Online Portal.

(3) After the PASRR Level II evaluation is available on the LTC Online Portal, the nursing facility must check the LTC Online Portal to review the list of specialized services to determine if specialized services can be provided or arranged.

(A) If the nursing facility determines that it cannot provide or arrange for the specialized services, the nursing facility documents this decision in the LTC Online Portal.

(B) If the nursing facility can provide or arrange for the specialized services, the nursing facility may admit the individual to the nursing facility and completes the MDS assessment within 14 calendar days after the date the individual is admitted to the nursing facility.

(4) The nursing facility and the local authority must take the actions described in this paragraph post admission to the nursing facility.

(A) The nursing facility contacts the local authority to schedule an IDT meeting to discuss specialized services.

(B) The local authority and nursing facility participate in the IDT meeting.

(C) The nursing facility includes any specialized services agreed to by the individual or LAR in the comprehensive care plan.

(D) The nursing facility identifies the specialized services it is responsible for providing in the LTC Online Portal.

(E) The nursing facility and local authority provide specialized services to the individual as identified in the comprehensive care plan.

(5) DADS monitors a local authority that provides services to individuals with intellectual or developmental disabilities and the nursing facility for delivery of the specialized services that are identified in a resident's comprehensive care plan.

(6) DSHS monitors a local authority that provides mental health services for the delivery of specialized services that are identified in a resident's comprehensive care plan.

(b) If an individual's Level I screening and Expedited Admission Form indicate that an individual meets the delirium, emergency protective services, respite, or coma criteria, a nursing facility may:

(1) admit the individual;

(2) enter data from the Level I screening in the LTC Online Portal; and

(3) cooperate with the resident review process.

§17.203. Resident Review Process.

(a) A local authority must conduct a PASRR Level II evaluation if a resident has an indication of intellectual disability, developmental disability, or mental illness and:

(1) experiences a significant change in status as determined by the MDS Significant Change in Status Assessment Form, including a resident who transfers to another nursing facility;

(2) is admitted under the criteria for delirium, emergency protective services, respite, or coma categories;

(3) is admitted with an exempted hospital discharge and has exceeded the allowed 30 calendar-day stay in the nursing facility; or

(4) is determined by a nursing facility, DADS, or DSHS to need a resident review for any other reason.

(b) The LTC Online Portal generates an automated notification to the local authority for a resident who meets the criteria for resident review.

(c) The local authority must conduct a PASRR Level II evaluation at the nursing facility within seven calendar days after receiving the notification from the LTC Online Portal.

(1) If a resident requests alternate placement during the PASRR Level II evaluation, the local authority must make the referral for alternate placement.

(2) If the setting a resident was referred to for alternate placement cannot admit the resident, the resident review screening process continues as described in subsections (d) and (e) of this section.

(d) The local authority must enter the PASRR Level II evaluation in the LTC Online Portal within seven calendar days after receiving the notification from the LTC Online Portal.

(e) The nursing facility must check the LTC Online Portal for the PASRR Level II evaluation and review the list of recommended specialized services.

(1) If the nursing facility determines that it cannot provide or arrange for the specialized services, the nursing facility must assist the individual with the transfer process to another facility or alternate setting.

(2) If the nursing facility can provide or arrange for the specialized services, the nursing facility and the local authority must take the actions described in this paragraph.

(A) The nursing facility contacts the local authority to schedule an IDT meeting to discuss specialized services.

(B) The local authority and nursing facility participate in the IDT meeting.

(C) The nursing facility includes the specialized services agreed to by the individual or the individual's LAR in the comprehensive care plan.

(D) The nursing facility identifies the services it is responsible for providing in the LTC Online Portal.

(E) The nursing facility and local authority deliver specialized services to the individual as identified in comprehensive care plan.

(3) DADS monitors a local authority that provides services to individuals with intellectual and developmental disabilities and the nursing facility for delivery of the specialized services that are identified in a resident's comprehensive care plan.

(4) DSHS monitors a local authority that provides mental health services to individuals with mental illness for the delivery of specialized services that are identified in a resident's comprehensive care plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2013.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 438-4162

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SUBCHAPTER C. RESPONSIBILITIES

40 TAC §§17.301 - 17.303

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections affect Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§17.301. Referring Entity Responsibilities.

A referring entity must ensure the following activities are completed before an individual is admitted to a nursing facility:

(1) complete the Level I screening for an individual seeking admission into a nursing facility, unless:

(A) the referring entity is a family member, LAR, other personal representative selected by the individual, or a representative from an emergency placement source, such as law enforcement, in which case the nursing facility may complete the Level I screening; or

(B) the individual is being admitted to the same facility in which the individual resided prior to hospitalization, in which case the nursing facility may complete the Level I screening;

(2) contact the nursing facilities selected by the individual or LAR to notify the facilities of the individual's interest in admission;

(3) provide the completed Level I screening to the selected nursing facility for an individual meeting the expedited admission criteria, exempted hospital discharge, or an individual who does not have an indication of mental illness, intellectual disability, or developmental disability;

(4) contact the local authority and request a PASRR Level II evaluation for an individual with an indication of intellectual disability, developmental disability, or mental illness, for individuals who are admitted through preadmission process; and

(5) provide the completed Level I screening to the local authority for an individual with an indication of mental illness, intellectual disability, or developmental disability for individuals who are admitted through the preadmission process.

§17.302. Nursing Facility Responsibilities.

A nursing facility must:

(1) complete the Level I screening for an individual seeking admission to the nursing facility if the individual meets the criteria for the expedited admission process;

(2) enter the Level I screening into the LTC Online Portal;

(3) contact the local authority and request a PASRR Level II evaluation for an individual with an indication of mental illness, intellectual disability, or developmental disability who meets the criteria for Expedited Admission;

(4) check the LTC Online Portal for the recommended list of specialized services;

(5) coordinate with the local authority to schedule and participate in an IDT meeting to discuss the individual's recommended specialized services;

(6) ensure the delivery of specialized services that are identified in the comprehensive care plan; and

(7) allow the office of the State Long-Term Care Ombudsman staff or representatives from Disability Rights Texas to counsel and inform affected residents of their rights and options under PASRR.

§17.303. Local Authority Responsibilities.

A local authority must:

(1) complete a PASRR Level II evaluation with the individual and in coordination with the LAR;

(2) enter the Level I screening completed by the referring entity in the LTC Online Portal for an individual who has an indication of mental illness, intellectual disability, or developmental disability being admitted to the nursing facility under the preadmission process;

(3) submit the PASRR Level II evaluation on the LTC Online Portal within seven calendar days after referral;

(4) coordinate with the nursing facility to complete the PASRR Level II evaluation during the expedited admission process;

(5) coordinate with the nursing facility to complete the PASRR Level II evaluation during the resident review process after receiving notification on the LTC Online Portal;

(6) make a referral for alternate placement, when requested by the individual or individual's LAR during the PASRR Level II evaluation;

(7) monitor the individual's transition to alternate placement;

(8) cooperate with the nursing facility to schedule an IDT meeting to discuss specialized services;

(9) participate in the IDT meeting;

(10) document in the LTC Online Portal that participation in the IDT has taken place;

(11) document in the LTC Online Portal whether or not specialized services for the individual have been agreed to in the comprehensive care plan;

(12) ensure delivery of the specialized services that are identified in the comprehensive care plan;

(13) enter additional nursing facilities on an individual's Level I screening in the LTC Online Portal when selected nursing facility placement options have been exhausted;

(14) check the Level I screening in the LTC Online Portal for an individual's nursing facility choices;

(15) inform the referring entity of the individual's placement options; and

(16) enter the final disposition of the individual on the Level I screening in the LTC Online Portal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2013.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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SUBCHAPTER D. VENDOR PAYMENT

40 TAC §17.401

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan

and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§17.401. Reimbursement for PASRR Level II Evaluation.

(a) A local authority conducts, under the terms of the contract with DADS, the PASRR Level II evaluation of each individual with a Level I screening indicating the individual has or is suspected of having an intellectual disability, developmental disability, or mental illness.

(b) A local authority must complete the PASRR Level II evaluation before billing DADS.

(c) When completing the PASRR Level II evaluation, a local authority must:

(1) call the referring entity or nursing facility to schedule the PASRR Level II evaluation;

(2) review medical records;

(3) meet face-to-face with the individual;

(4) meet face-to-face with the individual's LAR or participate by telephone if the LAR is not able to attend in person;

(5) obtain additional required information to complete the PASRR Level II evaluation;

(6) enter the PASRR Level II evaluation into the LTC Online Portal; and

(7) participate in the individual's IDT meeting to discuss and arrange for the delivery of the individual's specialized services.

(d) The rate that DADS pays to a local authority for a PASRR Level II evaluation covers travel costs associated with completing the PASRR Level II evaluation. DADS does not pay any additional amounts for travel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2013.

TRD-201300497
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 438-4162

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER Z. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)

40 TAC §19.2500

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §19.2500, concerning preadmission screening and resident review (PASRR), in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The purpose of the repeal is to remove outdated rules from DADS rule base. New rules regarding the PASRR program are proposed elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

The proposed repeal of §19.2500 removes the existing PASRR program rules in 40 TAC Chapter 19.

FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Carol Sloan, Interim DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is the revision and reorganization of PASRR program rules, resulting in up-to-date rules that meet federal requirements.

Ms. Sloan anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jamie White at (512) 438-4481 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R002, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be

submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R002" in the subject line.

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§19.2500. Preadmission Screening and Resident Review (PASARR).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2013.

TRD-201300498
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 438-4162

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.13

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes an amendment to §57.13, concerning Award and Acceptance of Grant Award.

The proposed amendment removes specific references that are no longer applicable to the ABTPA and includes language concerning establishment of an effective date for acceptance of a grant award. Texas Civil Statutes, Article 4413(37), §6(a) gives ABTPA the authority to change the reporting requirements of its grant projects.

Charles Caldwell, Director of the ABTPA, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment.

Mr. Caldwell has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to expedite the implementation of the preventive measures to reduce the incident of auto thefts and burglaries. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731 for a period of 30 days from the date that the proposed action is published in the *Texas Register.*

The amendment is proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, including changing the effective date of acceptance of a grant award.

No other statutes, codes or articles are affected by this proposal.

§57.13. Award and Acceptance of Grant Award.

(a) The ABTPA shall notify a grant applicant of final action on its grant application.

(b) Each grantee shall accept or reject a grant award in the form and manner prescribed by the ABTPA before the effective date of the grant period [~~within 30 days of the grant award date~~]. In any event, failure by the grantee to execute the grantee acceptance notice before the effective date of the grant period [~~within 30 days of the award date~~] shall be construed as a rejection of the grant award.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2013.

TRD-201300454
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 465-4011

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43 TAC §57.14

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes an amendment to §57.14, concerning Approval of Grant Projects.

The proposed amendment adds a specific reference that is applicable to ABTPA. Texas Civil Statutes, Article 4413(37), §6(a) gives ABTPA the authority to change the reporting requirements of its grant projects.

Charles Caldwell, Director of the ABTPA, has determined that for the first five-year period the amendment is in effect there will be

no fiscal implications for state or local governments as a result of enforcing or administering the amendment.

Mr. Caldwell has also determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the fair assessment of projects across the state taken into consideration for funding based on the scope of the project. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731 for a period of 30 days from the date that the proposed action is published in the *Texas Register.*

The amendment is proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, including changing the reporting requirement to the state of Texas fiscal year calendar.

No other statutes, codes or articles are affected by this proposal.

§57.14. Approval of Grant Projects.

(a) - (b) (No change.)

(c) In evaluating a project for funding, the ABTPA will consider:

(1) components of auto burglary and theft, including the auto theft rate (ratio of automobile burglaries or thefts in this state to the number of automobiles in this state), of the grantee's program area and its impact on the statewide auto theft rate and the reduction of auto burglaries;

(2) - (5) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2013.

TRD-201300455
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: March 24, 2013
For further information, please call: (512) 465-4011

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission withdraws the proposed amendment to §50.1 which appeared in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9730).

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300477
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Effective date: February 6, 2013
For further information, please call: (512) 463-5800

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PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT
SUBCHAPTER L. FINANCIAL INSTITUTION DATA MATCHES

1 TAC §55.552, §55.556

The Office of the Attorney General withdraws the proposed amendments to §55.552 and §55.556 which appeared in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6831).

Filed with the Office of the Secretary of State on February 5, 2013.

TRD-201300452
Katherine Cary
General Counsel
Office of the Attorney General
Effective date: February 5, 2013
For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners withdraws the proposed amendment to §7.10, concerning General Fees, which appeared in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9243).

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300562
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: February 11, 2013
For further information, please call: (512) 305-9040

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.23

The Texas Ethics Commission adopts an amendment to §18.23, relating to the administrative waiver of fines. The amendment is adopted without changes to the proposed text as published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9729) and will not be republished.

The amendment to §18.23 revises the rule relating to administrative waivers of fines by extending the reasons the executive director may grant a waiver of a late fine assessed in connection with a personal financial statement filed by an unopposed candidate in the primary election if the candidate meets certain criteria.

To request a waiver under the rule, a filer will submit an affidavit for the executive director's consideration.

One comment was received in opposition of the adoption of the amendment. The individual who submitted the comment stated that the rule would serve as an excuse for public officials not to timely file their personal financial statements.

The amendment is adopted under Government Code, Chapter 571 §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §18.23 affects §571.061 and §571.1731 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300513
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 463-5800

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PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT
SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §55.119

The Office of the Attorney General, Child Support Division, adopts an amendment to 1 TAC Chapter 55, Subchapter D, §55.119, concerning Forms for Notice of Lien, for Release of Child Support Lien, and for Partial Release of Child Support Lien, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6831) and will not be republished.

The adopted amendment is necessary to clarify the terms of the child support enforcement forms for Release of Child Support Lien and Partial Release of Child Support Lien, pursuant to Texas Family Code Chapters 157 and 231.

No comments were received regarding adoption of the amendment during the comment period.

The amendment is adopted under the Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Texas Family Code Chapter 231.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300486
Katherine Cary
General Counsel
Office of the Attorney General
Effective date: February 26, 2013
Proposal publication date: August 31, 2012
For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.30, 61.40, 61.41, 61.47

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to §§61.30, 61.40, 61.41, and 61.47, regarding the Combative Sports program, as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9424) without changes, and they will not be republished. The adoption takes effect March 1, 2013.

The amendments implement changes recommended by the Medical Advisory Committee at its meeting on October 26, 2012, and by Department staff to update and clarify existing rules to improve the regulation of the industry. A summary of each rule amendment was included in the notice of proposed rules published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9424).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the *Texas Register* on November 30, 2012. The 30-day public comment period closed on December 31, 2012.

The Department received no public comments.

The Medical Advisory Committee met on January 25, 2013, and since no public comments were received, the Committee recommended adoption of the proposed rules with no changes.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1602. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300519
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 475-4879

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CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 76, §76.10; new §§76.20 - 76.26, 76.30, 76.62, 76.65, 76.70 - 76.76, 76.78, 76.80, 76.90, and 76.100 - 76.111; and the repeal of existing §§76.200 - 76.206, 76.250, 76.300, 76.600 - 76.602, 76.650, 76.700 - 76.706, 76.708, 76.800, 76.900, and 76.1000 - 76.1011, regarding the Water Well Drillers and Water Well Pump Installers program.

Amendments to existing §76.10; and new §§76.22, 76.26, 76.30, 76.70 - 76.72, 76.100, and 76.101 are adopted with changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9565) and will be republished.

New §§76.20, 76.21, 76.23 - 76.25, 76.62, 76.65, 76.73 - 76.76, 76.78, 76.80, 76.90, and 76.102 - 76.111; and the repeal of existing §§76.200 - 76.206, 76.250, 76.300, 76.600 - 76.602, 76.650, 76.700 - 76.706, 76.708, 76.800, 76.900, and 76.1000 - 76.1011 are adopted without changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9565) and will not be republished. The adoption takes effect March 1, 2013.

The amendments, new rules and repeals implement the changes recommended by Department staff and the Water Well Advisory Council (Council) as a result of the rule review of 16 TAC Chapter 76, under Texas Government Code §2001.039. (See Notice of Intent to Review (Proposed Rule Review, June 1, 2012, issue of the *Texas Register* (37 TexReg 4071)) and Notice of Re-adoption (Adopted Rule Review, October 26, 2012, issue of the *Texas Register* (37 TexReg 8606)). The adoption also reorganizes and clarifies 16 TAC Chapter 76.

The adopted amendments to §76.10 delete terms which are also defined in the Texas Occupations Code Chapters 1901 and 1902 (the Code) and add definitions which clarify terms used in the Code and rules. Initially, the amendment to the definition of "monitoring well" was expanded to include a "geotechnical borehole" at the recommendation of the Council workgroup because of the potential for harm to groundwater; however, the Department believes, after further discussion, this change should be discussed further with interested parties. Therefore, it has been removed.

The adoption repeals §76.201 and replaces it with new §76.21, which deletes unnecessary language regarding the examination and adds requirements for obtaining Driller or Installer specialty endorsements, relocated from another subsection.

The adoption repeals §76.203 and replaces it with new §76.23 to streamline the rule section to align with other program rules and to repeal the limitation on taking the examination only twice within a twelve-month period.

The adoption repeals §76.250 and replaces it with new §76.25. Also, any reference to registration of Apprentices is removed. New §76.25(g) states that Drillers and Installers may place their licenses on "inactive status" and while "inactive" and are not required to take continuing education until they seek to return to "active" status.

The adoption repeals §76.300 and replaces it with new §76.30. All of the exemptions except "Underground Storage Tank Contractors" and "hand auger soil borings" were initially removed because they are either set forth in the Code, or are outside the mandates of the Code. However, the Department believes that §76.300(5), regarding installing pumps on leased property, is necessary as a rule and has returned this exemption to new §76.30 as paragraph (3).

The adoption repeals §76.602 and replaces it with new §76.62 to clarify the Department's responsibility to provide notification when a driller or installer encounters injurious water. The text relating to a hearing for a landowner who refuses to plug or complete a well is removed because the Department does not believe the Code authorizes formal enforcement against a landowner in this circumstance.

The adoption repeals §76.800 and replaces it with new §76.80, which removes language relating to examination fees, since those fees are currently collected by the examination providers. Additionally, the adoption adds fees related to inactive status and the section is reorganized to align more closely with rules in other regulated programs.

The adoption repeals §76.1000 and replaces it with new §76.100. The term "static water level" is replaced with "production zone". This amendment will further protect groundwater, because the static water level can be very shallow, for example, two feet below ground surface, and that would not provide enough room for adequate cementing of the annulus to prevent surface contamination from entering the well. Additionally, the text relating to an exemption for Class V injection wells is removed.

The adoption repeals §76.1004 and replaces it with new §76.104. The text relating to applying for a variance is removed because it is found within another rule section. New §76.104(e) is added to clarify that any licensee or landowner has authority to remove the pump.

The Department drafted and distributed the proposed amendments, new rules, and repeals to persons internal and external to the agency. The proposed amendments, new rules, and repeals were published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9565). The 30-day public comment period closed on January 7, 2013.

The Department received four public comments during the 30-day public comment period from: (1) an individual with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS); (2) an individual with Strata Core Services (SCS); (3) the Kenedy County Groundwater Conservation District (Kenedy); and (4) the Panola County Groundwater Conservation District (Panola). The four public comments address the following sections of the proposed rules: (1) §76.10, Definitions; (2) §76.26, A Person Assisting Licensing Driller or Licensed Pump Installers; (3) §76.30, Exemptions; (4) §76.62, Responsibilities of the Department--Injurious Water or Constituents; (5) §76.70, Responsibilities of the Licensee--State Well Reports; (6) §76.71, Responsibilities of the Licensee--Reporting Injurious Water or Constituents; (7) §76.72, Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging; (8) §76.100, Technical Requirements--Locations and Standards of Completion for Wells; (9) §76.101, Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents; (10) §76.104, Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones; and (11) §76.109, Technical Requirements--Variances--Alternative Procedures. Additionally, Department staff recommended changes to §76.22, Applications for Licenses and Renewals; and §76.26, A Person Assisting Licensed Driller or Licensed Pump Installers.

The Council met January 14, 2013, to discuss the public comments and the proposed rules. The public comments are summarized below by rule section, followed by the Department's responses to those public comments.

§76.10. Definitions.

Section 76.10 sets forth the definitions used in this chapter.

Public Comment: Kenedy recommended that the current definitions of Abandoned well, Groundwater Conservation District, and Injection well (§76.10(1), (26) and (27), respectively), be added back into the definitions for convenience. Additionally, it recommended that there are a few Groundwater Conservation Districts which are exempted from Chapter 36, Texas Water Code, but should be included.

Department Response: The Department is of the opinion that the definitions of Abandoned well and Injection well could be added back into the rules, except the definition of Abandoned well should mirror the statutory definition in Texas Occupations Code, Chapter 1901. The Department recommends adding in the definition of Deteriorated well. The definition of Groundwater Conservation District may not deviate from that in Chapter 1901, which should be amended to be accurate.

§76.26. A Person Assisting Licensed Driller or Licensed Pump Installers.

Section 76.26 sets forth the conditions under which an unlicensed person may perform drilling or installing work for a licensee.

Public Comment: Panola was concerned that the proposed language of §76.26 does not require adequate supervision by licensed drillers over the unlicensed drillers performing work and recommended replacing the 8 hour provision with "no more than a 2-hour arrival time".

Department Response: The Department agrees. Additionally, §76.26(g) was added to show that §76.26(c) is effective May 1, 2013.

§76.75. Responsibilities of the Licensee--Representations.

Section 76.75 sets forth general standards of professional conduct for drillers and installers.

Public Comment: Panola is concerned that there is an apparent conflict between the provisions of §76.75(d) *(NOTE: The commenter referenced §76.74(d), but that is an apparent typographical error.)* and §76.26 regarding an unlicensed person's ability to enter into agreements with licensees and continue to perform drilling work for them.

Department Response: The Council was of the opinion that this rule may require additional assessment in light of the removal of the Apprentice program. Though they declined to make any changes at this time, this rule will be addressed with staff in an upcoming Council workgroup meeting.

§76.30. Exemptions.

Section 76.30 sets forth exemptions to the requirement licensure.

Public Comment: NRCS questioned why §76.300(1), (5) and (7) were proposed to be removed from the list of exemptions.

Department Response: Section 76.300(1) and (7) are already described as exemptions in the Code so the Department would not recommend placing them back in the rules; however, upon further review, staff agrees that §76.300(5) should be added back because the exemption for a person who installs or repairs

pumps on land he owns or "controls" can be confusing to find in the Code. This "control" exemption is not for well drillers, only for those who install or repair pumps. It can be found in §1901.052(b)(1)(A) and §1902.052(b)(1)(A) of the Texas Occupations Code.

§76.62. Responsibilities of the Department--Injurious Water or Constituents.

Section 76.62 sets forth the Department's responsibilities when informed of injurious water encountered by a driller or installer.

Public Comment: Kenedy asked why the proposal removed text relating to a hearing for a landowner who refuses to plug or complete a well under this section.

Department Response: This text was removed because the Department does not believe that it has authority under Chapter 1901 of the Texas Occupations Code to initiate a contested case in this matter as it does for failing to plug or cap abandoned or deteriorated wells.

§76.70. Responsibilities of the Licensee--State Well Reports.

Section 76.70 sets forth the procedures for submitting Well and Plugging Reports.

Public Comment: Generally: Kenedy recommended reorganizing §76.70 such that it began with (a) for the first paragraph.

Department Response: Due to a technical requirement from the *Texas Register,* we cannot propose the rule with a subsection (a) if there is no subsection (b). It is call the "implied (a)" format and must remain the way it was proposed.

Public Comment: Provisions: §76.70(1) and §76.70(2). Kenedy was concerned that there was no apparent time frame for a driller to turn in a State Well Report or Plugging Report to the Groundwater Conservation Districts (GCDs).

Department Response: The Department is of the opinion that such timeframes are not appropriate in these rules, as each GCD has its own time frame for drillers to send in the reports, and this could present conflicts and confusion. A licensed driller is held to follow the rules of the GCD where the well is located, if any.

Public Comment: Provisions: §76.70(1), (2), and (3). Kenedy recommended that, for clarity, the language "local groundwater conservation district, if applicable" be replaced with "the groundwater conservation district in which the well is located, if any." Panola recommended taking out the groundwater conservation district's requirement (in §76.70(3)) to provide State of Texas Plugging Reports, stating they should be supplied by the Department.

Department Response: The Department agrees with the recommendations.

§76.71. Responsibilities of the Licensee--Reporting Injurious Water or Constituents.

Section 76.71 sets forth the licensee's responsibility when encountering injurious water or constituents.

Public Comment: Kenedy recommended replacing "local groundwater conservation district, if applicable" with "the groundwater conservation district in which the well is located, if any". Kenedy was apparently confused with the definitions of "Injurious water", "Undesirable water" and "Pollution". Additionally, it was not apparent to Kenedy that there is a deadline for the notice of injurious water to be provided to a groundwater conservation district.

Department Response: The Department agrees to replace the recommended language regarding GCDs. The Department acknowledges that the terms "injurious water", "undesirable water" and "pollution" have subtle differences, and the meanings can overlap. For this proposal, the term "injurious water" is defined in §1901.254 of the Code, and this term shall be limited in the rules to use where specific, statutory notifications are required. For all other technical terms, the use of "undesirable water", as defined in the rules, will be used. These definitions are subject to additional assessment and review in future Council workgroups. Regarding the timeframes, as with the State Well Reports and Plugging Reports, the Department declines to place a deadline to report to the groundwater conservation districts.

§76.72. Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging.

Section 76.72 sets forth licensees' and landowners' responsibilities with respect to abandoned or deteriorated wells.

Public Comment: §76.72(e): Kenedy recommended clarifying whether abandoned wells and deteriorated wells can be plugged and/or capped. It recommended language in §76.72(e) to begin the subsection with: "A deteriorated well must be plugged. An abandoned well must be either capped or plugged." Further it recommended replacing "commission" with "department" and a 10-day deadline for the department to notify a groundwater conservation district if a landowner misses the 180-day deadline.

Department Response: The Department agrees that the new language recommended for the first sentence in (e) does clarify the requirements. The Department declines to make the other changes, as they are not appropriate.

Public Comment: §76.72(f): Kenedy proposes to add language clarifying this subsection relating to when to use alternative capping procedures.

Department Response: The Department agrees.

Public Comment: §76.72(g): Kenedy recommends clarifying the type of "cap" or "covering" to be used in this subsection.

Department Response: The Department declines to make these changes as this could substantially change the meaning of the subsection. Department staff can answer this question with a Frequently Asked Question (FAQ) and take this into consideration in further rulemaking actions.

§76.100. Technical Requirements--Locations and Standards of Completion for Wells.

Section 76.100 sets forth technical requirements and standards for constructing wells.

Public Comment: Kenedy recommended rearranging the entire section for clarity and understanding. Additionally, Kenedy recommends not using terms such as "it is recommended" and "should" for lack of enforcement ability.

Department Response: The Department declines to make the changes to the proposed rule at this time because it would substantially change the meaning of the proposed regulations; however, it will address this issue in its next rulemaking.

Public Comment: §76.100(a): Panola is concerned that the well completion requirements in §76.100(a) do not adequately address the complete filling of the annular space and recommend adding what should be used to fill it.

Department Response: The Department declines to make substantive changes at this time, but will address this issue in its next rulemaking. The Department is of the opinion that the driller's judgment should be a factor in determining this procedure.

Public Comment: §76.100(b): NRCS recommended correcting an apparent typographical error in this subsection.

Department Response: The Department agrees that the recommended change is appropriate.

Public Comment: §76.100(c)(1): NRCS expressed concern that this subsection does not address what SDR is required for smaller than 6" and larger than 8" sleeve sizes.

Department Response: The Department declines to make a substantive change to this subsection. A driller's judgment should be used. This will be addressed at the next rulemaking.

§76.101. Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.

Section 76.101 sets forth requirements when completing wells where undesirable water has been encountered.

Public Comment: Kenedy is concerned that the terms "see that the well" and "forthwith completed" render the rules difficult to enforce.

Department Response: The Department would agree to replace "see" with "ensure" but declines to make other substantive or potentially substantive changes at this time.

§76.104. Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.

Section 76.104 sets forth standards for capping and plugging of wells.

Public Comment: §76.104(a): Kenedy recommends a change in the text of this subsection to require a driller, when drilling in jurisdictions such as local groundwater conservation districts or incorporated cities, to choose (in the case of apparently conflicting standards) standards "most protective of groundwater".

Department Response: Though the Department acknowledges that this choice is probably understood by the driller, to put a requirement to use standards "most protective of groundwater" could impose a requirement on a driller with unintended or contemplated regulatory consequences, and declines to make this change.

Public Comment: §76.104(c): NRCS questions whether the intent of this subsection is to address only a newly-drilled well, and if so, to clarify the rule.

Department Response: The Department acknowledges that it is intended for newly-drilled wells, and can address this in an FAQ and take this up in the next rulemaking. The Department declines to make any changes to the proposal at this time.

§76.109. Technical Requirements--Variances--Alternative Procedures.

Section 76.109 sets forth the process for obtaining a variance to the standards for completing wells adopted by the Commission.

Public Comment: Kenedy believes that a variance request must be made prior to using any alternative procedures and not permit "after the fact" variance requests and approvals.

Department Response: The Department declines to make changes to this procedure. Realistically, this procedure has been successful in allowing drillers to work with the Department if their alternative procedure does not adequately protect groundwater.

At its January 14, 2013, meeting, the Council recommended that the proposed rules be adopted as published, with changes to §§76.10, 76.22, 76.26, 76.30, 76.70 - 76.72, 76.100, and 76.101 based on the public comments received and the Department's recommendations. At its January 30, 2013, meeting, the Commission considered the proposed rules and the public comments received. The Commission adopted the amendments, new sections, and repeal as proposed, with changes to §§76.10, 76.22, 76.26, 76.30, 76.70 - 76.72, 76.100, and 76.101 based on the public comments received and the Council's and the Department's recommendations.

16 TAC §§76.10, 76.20 - 76.26, 76.30, 76.62, 76.65, 76.70 - 76.76, 76.78, 76.80, 76.90, 76.100 - 76.111

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1901 and 1902. No other statutes, articles, or codes are affected by the adoption.

§76.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Altering--The process of changing the original design or intent of a completed well.

(2) Abandoned well--A well that is not in use. A well is considered to be in use if:

(A) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;

(B) the well is not a deteriorated well and has been capped;

(C) the water from the well has been put to an authorized beneficial use, as defined by the Texas Water Code;

(D) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or

(E) the owner is participating in the Conservation Reserve Program authorized by Sections 1231 - 1236, Food Security Act of 1985 (16 U.S.C. §§3831 - 3836), or a similar governmental program.

(3) Annular space--The space between the casing and borehole wall.

(4) Atmospheric barrier--A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(5) Bentonite--A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encoun-

tered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

(6) Bentonite grout--A fluid mixture of sodium bentonite and potable water mixed at manufacturers' specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the borehole in order to prevent the subsurface migration or communication of fluids.

(7) Borehole or well bore--The drilled hole.

(8) Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

(9) Casing--A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(A) Plastic casing--National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(B) Steel Casing--New ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(C) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

(10) Cement--A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum or other additives.

(11) Cessation of drilling--When the borehole has been drilled to total depth and casing has been placed in the borehole.

(12) Chemigation--A process whereby pesticides, fertilizers or other chemicals, or effluents from animal wastes is added to irrigation water applied to land or crop, or both, through an irrigation distribution system.

(13) Closed Loop Geothermal Well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.

(14) Code--Refers to Texas Occupations Code, Chapters 1901 and 1902.

(15) Commingling--The mixing, mingling, blending or combining through the borehole casing annulus or the filter pack of waters that differ in chemical quality, which causes quality degradation of any aquifer or zone.

(16) Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. Annular space positive displacement or pressure tremie tube grouting or cementing (sealing) method shall be used when encountering undesirable water or constituents above or below the zone to be monitored or if the monitoring well is greater than twenty (20) feet in total depth. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(17) Completed to produce undesirable water--A completed well which is designed to extract water from a zone which contains undesirable water.

(18) Completed water well--A water well, which has sealed off access of undesirable water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods.

(19) Constituents--Elements, ions, compounds, or substances which may cause the degradation of the soil or ground water.

(20) Deteriorated well--A well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.

(21) Dry litter poultry facility--Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(22) Easy access--Access is not obstructed by other equipment and the fitting can be removed and replaced with a minimum of tools without risk of breakage of the attachment parts.

(23) Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, Williamson, and Bell Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(24) Environmental soil boring--An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

(25) Filter pack--The media that is used in the annular space around the well screen to create a filter to prevent sand or sediment from entering the well.

(26) Flapper--The clapper, closing, or checking device within the body of the check valve.

(27) Foreign substance--Constituents that include recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(28) Freshwater--Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

(29) Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(30) Injection well--This term includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(31) Grout--This term shall include cement or bentonite mixed with water, or a combination of bentonite and cement mixed with water and/or Department-approved additives.

(32) Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(33) Monitoring well--An artificial excavation that is constructed to measure or monitor the quantity or movement of substances below the surface of the ground, and that is not used in conjunction with the production of oil, gas, or other minerals.

(34) Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(35) Offering to perform--Making a written or oral proposal, contracting in writing or orally to perform well drilling or pump installing work, or advertising in any form through any medium that a person or business entity is a well driller or pump installer, or that implies in any way that a person or business entity is available to contract for or perform well drilling or pump installing work.

(36) Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(37) Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(38) Placement and preparation for operation of equipment and materials--Includes but is not limited to removing the pump.

(39) Plugging--An absolute sealing of the well bore.

(40) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

(41) Positive placement method--The process in which the cement, bentonite or a combination of the two sealing materials is forced through the well casing followed by water or drilling fluids, via a mechanical pump and out through relief holes in the casing at the maximum depth of the zone to be grouted. The grout then returns under pressure to the surface through the annular space and upon curing or setting causing an annular seal.

(42) Potable water--Water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects.

(43) Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Commission on Environmental Quality, 30 TAC Chapter 290.

(44) Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas Commission on Environmental Quality.

(45) Reconditioning--The process where a well is cleaned out to original depth and the water production is restored. This term shall include any procedures that make the well operable.

(46) Re-completion--The process to bring an existing well into compliance with §76.100 or §76.105 by installing any and all sanitary seals, safeguards, casing, grouting, and the re-setting of well screens as required.

(47) Recovery well--A well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

(48) Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(49) Test well--A well drilled to explore for groundwater.

(50) Tremie pipe method--The process in which a small diameter pipe or tubing is inserted in the annular space of the well to the maximum depth of the zone to be sealed, before the grouting procedure is commenced to pump sealing material through. The tubing or pipe may be retrieved during the grouting process, causing an annular seal.

(51) Undesirable water--Water that is injurious to human health and the environment or water that can cause pollution to land or other waters.

(52) Water or waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(53) State of Texas Well Report (Well Log)--A log recorded on forms prescribed by the department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the executive director.

§76.22. Applications for Licenses and Renewals.

(a) Application shall be made on forms approved by the department.

(b) The application shall include the applicant's statement that he has drilled or installed pumps under supervision of a driller or pump installer licensed under the Code and this chapter.

(c) When the department determines that the qualifications submitted in the application meet the requirements for taking the requested license examination, the applicant is eligible to take the examination.

(d) A license issued by the department will expire annually from the date of issuance.

§76.26. A Person Assisting Licensed Driller or Licensed Pump Installers.

(a) A person not licensed to perform drilling or pump installing work may assist a licensed driller or pump installer provided that the unlicensed person is not primarily responsible for the drilling or installation operations, and provided that the unlicensed person:

(1) performs drilling work under the direct supervision of a licensed driller; or

(2) performs pump installing work under the direct supervision of a licensed pump installer.

(b) A licensed driller or pump installer may directly supervise no more than three unlicensed persons at any time.

(c) A licensed driller or pump installer shall provide to the department, at the time of license renewal on a form prescribed by the department, a written list of all of the unlicensed assistants who the licensee directly supervises to perform drilling or pump installing work at the time of the renewal and who performed drilling or installing work under their supervision at any time during the previous 12 month period of the licensee's license term.

(d) For purposes of this chapter and the Code, a licensed driller or pump installer provides "direct supervision" to an unlicensed assistant if the licensed driller or pump installer:

(1) is present at the well site at all times during all drilling or pump installing operations; or

(2) is represented at the well site by an unlicensed assistant, capable of immediate communication with the licensed driller or pump installer at all times and the licensed driller or pump installer is no more than a reasonable distance from the well site, but no further than a 2 hour arrival time; and

(3) inspects the well site at least once in every 24-hour period of operation.

(e) The supervising licensee is responsible for ensuring that the unlicensed person performs drilling or pump installing work in compliance with the Code and this chapter.

(f) Any allegation of a violation of this chapter or the Code against an unlicensed person performing work as set forth in this chapter, shall be opened as a complaint against the supervising licensee.

(g) The provisions listed in subsection (c) are effective for water well driller and pump installer licenses that expire on or after May 1, 2013.

§76.30. Exemptions.

The following are not required to obtain a license under the Code.

(1) Any person who, pursuant to 30 TAC Chapter 334, Subchapter I, possesses a Class A or Class B Underground Storage Tank (UST) Installers' license who drills observation wells within the backfill of the original excavation for USTs, including associated piping and pipe trenches (tank plumbing and piping), to a depth of no more than two feet below the tank bottom. However, if the total depth exceeds 20 feet below ground surface, a licensed driller is required to drill the well.

(2) Any person who drills environmental hand auger soil borings no more than 10 feet in depth.

(3) Any person who installs or repairs water well pumps and equipment on his own property, or on property that he has leased or rented, for his own use.

§76.70. Responsibilities of the Licensee--State Well Reports.

Every well driller who drills, deepens, or alters a well, within this state shall record and maintain a legible and accurate State of Texas Well Report on a form prescribed by the executive director. Each copy of a State of Texas Well Report, other than a department copy, shall include the name, mailing address, web address and telephone number of the department.

(1) Every well driller shall transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State of Texas Well Report to the department. Every well driller shall deliver or send by first-class mail a photocopy to the groundwater conservation district in which the well is located, if any. Every well driller shall also deliver or send by first-class mail a photocopy to the owner or person for whom the well was drilled, within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(2) The person that plugs a well shall, within 30 days after plugging is complete, transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State of Texas Plugging Report to the department. The person that plugs the well shall deliver or send by first-class mail a copy of the State of Texas Plugging Report to the groundwater conservation district in which the well is located, if any. The person that plugs the well shall deliver or send by first-class mail a copy of the State of Texas Plugging Report to the owner or person for whom the well was plugged.

(3) The department shall furnish State of Texas Plugging Reports on request.

(4) The executive director shall prescribe the contents of the State of Texas Plugging Reports.

§76.71. Responsibilities of the Licensee--Reporting Injurious Water or Constituents.

Each well driller or installer shall, within 24 hours of becoming aware of the existence of injurious water or constituents, inform the landowner or person having a well drilled, deepened, or otherwise altered. The well driller or installer shall, within 30 days of becoming aware of the existence of injurious water or constituents transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the Injurious Water or Constituents Report to the department. The well driller or installer shall also deliver or send by first-class mail a copy of the Injurious Water or Constituents Report to the groundwater conservation district in which the well is located, if any, and the landowner or person having the well drilled, deepened, or altered.

§76.72. Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging.

(a) All well drillers, installers and persons having a well drilled, deepened or altered, and persons in possession of abandoned

or deteriorated wells, shall adhere to the provisions of the Code and this chapter prescribing the location of wells and proper drilling, completion, capping and plugging.

(b) A licensed driller shall ensure that when injurious water or constituents are knowingly encountered, the well is plugged or is converted into a properly completed monitoring well as defined in §76.10(33), and under the standards set forth in §76.104.

(c) A driller must comply with applicable requirements of the Texas Commission on Environmental Quality rules under 30 TAC Chapter 331, if injurious water or constituents are encountered while drilling a Class V Injection well.

(d) If a landowner, or person having the well drilled, deepened or altered refuses to allow a licensed driller or installer access to the well which requires plugging or completion or otherwise precludes the driller or installer from plugging or completing a well where injurious constituents or water have been encountered, the driller shall, within 48 hours of the refusal, file a signed statement to that effect with the department and provide a copy of the statement to the local groundwater conservation district. The statement shall indicate that:

(1) the driller, installer or person under his supervision, encountered injurious water or constituents while drilling the well;

(2) the driller or installer has informed the person having the well drilled, deepened or otherwise altered that injurious water or constituents were encountered and that the well must be plugged or completed pursuant to Texas Occupations Code, §1901.254 or §1902.253, and this chapter;

(3) the person or landowner having the well drilled, deepened or altered has denied the driller or installer access to the well;

(4) the reason, if known, for which access has been denied; and

(5) if known, whether the person having the well drilled, deepened or otherwise altered intends to have the well plugged or completed.

(e) A deteriorated well must be plugged. An abandoned well must be either capped or plugged. If a landowner or person who possesses an abandoned or deteriorated well fails to have the well plugged or capped under standards and procedures adopted by the commission within 180 days from learning of its condition, the department shall notify the local groundwater conservation district and the department may initiate a contested case against the landowner or person for a violation of Texas Occupations Code, §1901.255.

(f) It is the responsibility of a landowner or person in possession of a well that is open at the surface, to have the well capped under standards set forth in §76.104, unless subsection (g) of this section applies.

(g) The driller of a newly-drilled well shall place a cover or cap which is not easily removed over the boring or casing if the well is intended to be left unattended without a pump installed. It shall be the responsibility of the pump installer to place a cap over the casing which is not easily removable if the well is intended to be left unattended with the pump removed.

§76.100. Technical Requirements--Locations and Standards of Completion for Wells.

(a) Wells shall be completed in accordance with the following specifications and in compliance with the local groundwater conservation district rules or incorporated city ordinances:

(1) The annular space to a minimum of ten (10) feet shall be three (3) inches larger in diameter than the casing and filled from ground level to a depth of not less than ten (10) feet below the land surface or well head with cement slurry, bentonite grout, or eight (8) feet solid column of granular sodium bentonite topped with a two (2) foot cement atmospheric barrier, except in the case of monitoring, dewatering, piezometer, and recovery wells when the water to be monitored, recovered, or dewatered is located at a more shallow depth. In that situation, the cement slurry or bentonite column shall only extend down to the level immediately above the monitoring, recovery, or dewatering level. Unless the well is drilled within the Edwards Aquifer, the distances given for separation of wells from sources of potential contamination in paragraph (2) may be decreased to a minimum of fifty (50) feet provided the well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the production zone. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(2) A well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressure filled to the depth of one hundred (100) feet to the surface provided the annular space is three (3) inches larger than the casing may encroach up to five (5) feet of the property line. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the production zone. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(3) A well shall be located a minimum horizontal distance of fifty (50) feet from any water-tight sewage and liquid-waste collection facility, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates.

(4) Except as noted in paragraphs (1) and (2) a well shall be located a minimum horizontal distance of one hundred fifty (150) feet from any concentrated sources of potential contamination such as, but not limited to, existing or proposed livestock or poultry yards, cemeteries, pesticide mixing/loading facilities, and privies, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates. A well shall be located a minimum horizontal distance of one hundred (100) feet from an existing or proposed septic system absorption field, septic systems spray area, a dry litter poultry facility and fifty (50) feet from any property line provided the well is located at the minimum horizontal distance from the sources of potential contamination.

(5) A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of thirty-six (36) inches above ground level and twenty-four (24) inches below the ground surface.

(6) The following are exceptions to the property line distance requirement where:

(A) groundwater conservation district rules are in place regulating the spacing of wells;

(B) platted or deed restricted subdivision regulated spacing of wells and on-site sewage systems are part of planning; or

(C) public wastewater treatment is provided and utilized by the landowner.

(b) In all wells where plastic casing is used, except when a steel or polyvinyl chloride (PVC) sleeve or pitless adapter, as described in subsection (c) is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

(1) The slab or block shall extend laterally at least two (2) feet from the well in all directions and have a minimum thickness of four (4) inches and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(2) The surface of the slab shall be sloped to drain away from the well.

(3) The top of the casing shall extend a minimum of twelve (12) inches above the land surface except in the case of monitoring wells when it is impractical or unreasonable to extend the casing above the ground. Monitoring wells shall be placed in a waterproof vault the rim of which extends two (2) inches above the ground surface and a sloping cement slurry shall be placed a minimum twelve (12) inches from the edge of the vault and two (2) feet below the base of the vault between the casing and the wall of the borehole so as to prevent surface pollutants from entering the monitoring well. The well casing shall have a locking cap that will prevent pollutants from entering the well. The annular space of the monitoring well shall be sealed with an impervious bentonite or similar material from the top of the interval to be tested to the cement slurry below the vault of the monitoring well.

(4) The well casing of a temporary monitoring well shall have a locking cap and the annular space shall be sealed from zero (0) to one (1) foot below ground level with an impervious bentonite or similar material; after 48 hours, the well must be completed in accordance with this section or plugged in accordance with §76.104.

(5) The annular space of a closed loop geothermal well used to circulate water or other fluids shall be backfilled to the total depth with impervious bentonite or similar material, closed loop injection well where there is no water or only one zone of water is encountered you may use sand, gravel or drill cuttings to back fill up to ten (10) feet from the surface. The top ten (10) feet shall be filled with impervious bentonite or similar materials and meets the standards pursuant to Texas Commission on Environmental Quality 30 TAC Chapter 331.

(c) In wells where a steel or PVC sleeve is used:

(1) The steel sleeve shall be a minimum of 3/16 inches in thickness and/or the plastic sleeve shall be a minimum of Schedule 80 sun resistant or SDR 17 in the 6" and 8" inch sun resistant and be twenty four (24) inches in length, and shall extend twelve (12) inches into the cement, except when steel casing or a pitless adapter as described in paragraph (2) is used. The casing shall extend a minimum of twelve (12) inches above the land surface, and the steel/plastic sleeve shall be two (2) inches larger in diameter than the plastic casing being used and filled entirely with cement; or

(2) A slab or block as described in this subsection is required above the cement slurry except when steel casing or a pitless adapter is used. Pitless adapters may be used in such wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal;

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than twenty (20) feet below the adapter connection; and

(C) in lieu of cement, the annular space may be filled with a solid column of granular sodium bentonite to a depth of not less than twenty (20) feet below the adapter connection.

(d) All wells shall be completed so that aquifers or zones containing waters that differ in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

(e) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(f) Each licensee shall use potable water in drilling fluids.

(g) Each licensed well driller drilling, deepening, or altering a well shall keep any drilling fluids, tailings, cuttings, or spoils contained in such a manner so as to prevent spillage onto any property not under the jurisdiction or control of the well owner without the property owners' written consent.

(h) Each licensed well driller drilling, deepening, or altering a well shall prevent the spillage of any drilling fluids, tailings, cuttings, or spoils into any body of surface water.

(i) Unless waived by written request from the landowner, a new, repaired, or reconditioned well or pump installation or repair on a well used to supply water for human consumption shall be properly disinfected. The well shall be properly disinfected with chlorine or other appropriate disinfecting agent under the circumstances. A disinfecting solution with a minimum concentration of fifty (50) milligrams per liter (mg/l) (same as parts per million), shall be placed in the well as required by the American Water Works Association (AWWA), pursuant to ANST/AWWA C654-87 and the United States Environmental Protection Agency (EPA).

(j) A licensed installer shall disinfect the well by:

(1) treating the water in the well casing to provide an average disinfectant residual to the entire volume of water in the well casing of fifty (50) mg/l. This may be accomplished by the addition of calcium hypochlorite tablets or sodium hypochlorite solution in the prescribed amounts;

(2) circulating, to the extent possible, the disinfected water in the well casing and pump column; and

(3) pumping the well to remove disinfected water for a minimum of fifteen (15) minutes.

(4) If calcium hypochlorite (granules or tablets) is used, it is suggested that the installer dribble the tablets of approximately five-gram (g) size down the casing vent and wait at least thirty (30) minutes for the tablets to fall through the water and dissolve. If sodium hypochlorite (liquid solution) is used, care should be taken that the solution reaches all parts of the well. It is suggested that a tube be used to pipe the solution through the well-casing vent so that it reaches the bottom of the well. The tube may then be withdrawn as the sodium hypochlorite solution is pumped through the tube. After the disinfectant has been applied, the installer should surge the well at least three times to improve the mixing and to induce contact of disinfected water with the adjacent aquifer. The installer should then allow the disinfected water to rest in the casing for at least twelve hours, but for not more than twenty-four hours. Where possible, the installer should pump the well for a minimum of fifteen (15) minutes after completing the disinfection procedures set forth above until a zero disinfectant residual is obtained. In wells where bacteriological contamination is

suspected, the installer shall inform the well or property owner that bacteriological testing may be necessary or desirable.

(k) A test well that is drilled for exploring for groundwater shall not be open at the surface or allowing water zones of different chemical quality to commingle and must be completed or plugged within six (6) months of drilling.

(l) Water wells located within public water supply system sanitary easements must be constructed to public well standards pursuant to 30 TAC Chapter 290.

(m) Pump column material that has been used in the production of oil or gas or has been exposed to contamination may not be placed in a well regulated by this department.

§76.101. Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.

If a well driller encounters undesirable water or constituents and the well is not plugged or made into a completed monitoring well as defined in §76.10(33), the licensed well driller shall ensure that the well drilled, deepened, or altered is forthwith completed in accordance with the following:

(1) When undesirable water or constituents are encountered in a water well, the undesirable water or constituents shall be sealed off and confined to the zone(s) of origin. It is a defense to prosecution for violation of this section that the driller reasonably was not aware of having encountered undesirable water or constituents.

(2) When undesirable water or constituents are encountered in a zone overlying fresh water, the driller shall case the water well from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of water quality.

(3) The annular space between the casing and the wall of the borehole shall be pressure grouted with positive displacement technique or the well is tremie pressured filled provided the annular space is three inches larger than the casing with cement or bentonite grout from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(4) When undesirable water or constituents are encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the undesirable water or constituent zone shall be filled with pressured cement or bentonite grout to a height that will prevent the entrance of the undesirable water or constituents into the water well. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(5) For Class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas Commission on Environmental Quality 30 TAC Chapter 331.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300521
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2013
Proposal publication date: December 7, 2012
For further information, please call: (512) 475-4879

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16 TAC §§76.200 - 76.206, 76.250, 76.300, 76.600 - 76.602, 76.650, 76.700 - 76.706, 76.708, 76.800, 76.900, 76.1000 - 76.1011

The repeal is adopted under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51, 1901 and 1902. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND REVIEW OF EXISTING DEGREE PROGRAMS

19 TAC §5.46

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §5.46, concerning Criteria for New Doctoral Programs, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8416).

The amendment to this section provides an accurate reference to the section of the Texas Administrative Code requiring Coordinating Board approval prior to public colleges and universities delivering doctoral programs through distance education and/or off-campus instruction.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Education Code, Chapter 61, Subchapter C, §61.051(j), which provides the Coordinating Board with the authority to require public colleges and universities to gain approval from the Coordinating Board prior to the delivery of doctoral programs through distance education and/or off-campus instruction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300480
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: October 26, 2012
For further information, please call: (512) 427-6114

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CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.3 - 7.8, 7.10 - 7.12, 7.14

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§7.3 - 7.8, 7.10 - 7.12, and 7.14, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions. Sections 7.3, 7.8, and 7.11 are adopted with changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8417) and will be republished. Sections 7.4 - 7.7, 7.10, 7.12 and 7.14 are adopted without changes and will not be republished.

The amendments within the revised sections standardize defined terms use, capitalization and punctuation throughout Chapter 7.

The amendments to §7.3 include revising the definition of an agent to exclude persons employed by or representing institutions that hold a Certificate of Authorization or Authority. A definition was added for the Certificate of Registration. Definitions were added to clarify experiential learning activities, such as internships, clinical site experiences and visiting student status. These added definitions will provide clearer direction to out-of-state institutions applying for certificates based on clinicals or internships. The Conditional Certificate of Authorization was changed to Provisional Certificate of Authorization and the definition refined to clarify applicability to institutions and maximum time periods. The substantive change definition was expanded to specifically include changes in accrediting agency or status with such accrediting agency, degree or credential levels or additions of programs, degrees or credentials offered. A definition was added for a single point of contact with whom the Board will communicate institutional changes or information. Institutions are required to provide changes in designation of the single point of contact to the Board. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.4 revise terminology to differentiate institutional assessment from program evaluation. The amendments to §7.4 standardize defined terms use, capitalization and punctuation.

The amendments to §7.5 explain circumstances when an institution may represent transferability of credit. Language regarding specific administrative penalties is also clarified. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.6 change recognized accrediting agencies' reporting responsibilities from annually to upon notice of continued recognition by the U.S. Department of Education or upon change in recognition status, scope or level. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.7 provide more specific guidance to institutions qualifying for a Certificate of Authorization. The identity of the institution's single point of contact is added to the information to be provided in the application. Requirements for Certificates of Authorization based only on providing clinicals or internships in Texas are explained. The valid time periods for both Certificates of Authorization based on clinicals or internships and Provisional Certificates of Authorization are added. Cessation of course offerings upon revocation of a Certificate of Authorization is added. Language is added to define institutions allowed to enter into a teach-out agreement with an institution which is closing. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.8 add the identity of the institution's single point of contact to the information to be provided in the application. Cessation of course offerings upon revocation of a Certificate of Authority is also added. Requirements for Certificate of Registration agents' fees are removed from this section and added to §7.10. Language is added to define institutions allowed to enter into a teach-out agreement with an institution which is closing. Approval of additional degree programs for Alternative Certificates of Authority is clarified. The valid time period for an Alternative Certificate of Authority is specified. A waiting period is added for reapplication after denial of an application for an Alternative Certificate of Authority. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.10 reflect the definition change for agents. Fee requirements for Certificates of Registration for agents are added to this section. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.11 add Certificates of Authorization coverage. The expanded substantive change definition is included in the requirements for approvals of program revisions. Communication of ownership and other substantive changes through

the person designated as the institution's single point of contact is specified. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.12 include clearer procedures for review of degrees from institutions not eligible for Certificates of Authority. The amendments standardize defined terms use, capitalization and punctuation.

The amendments to §7.14 expand exemption of institutions offering distance education with no physical presence in Texas to institutions which have accreditation from an accrediting agency recognized by the Secretary of Education of the U.S. Department of Education. The section is reorganized to better explain application requirements if an institution's status changes. The amendments standardize defined terms use, capitalization and punctuation.

Several comments were received as a result of these amendments and are as follows:

Comment: Carol McDonald, on behalf of Independent Colleges and Universities of Texas (ICUT), commented that adding language to specifically list a "private or independent institution of higher education" in the definition of an exempt institution under §7.3(24) will clarify that such institutions are within the broad definition of "postsecondary educational institutions" while stating the exemption more clearly.

Response: Staff agree and have added clarifying language to §7.3(24).

Comment: Ashford University and University of the Rockies commented that the definition of Substantive Change in §7.3(43) should be limited to a "final action by an accrediting agency" with regard to an institution's status with such accrediting agency, change in degree- or credential-level for an approved program, or addition of new programs, degrees or credentials offered.

Response: Staff agree and have added clarifying language to §7.3(43).

Comment: Ashford University and University of the Rockies commented that §7.8(14)(F)(iv) should include language to clarify that an institution may exhaust all appeal options after denial of an Alternative Certificate of Authority before the 180 days period begins when the institution may not reapply for an Alternative Certificate of Authority.

Response: Staff agree and have added clarifying language to §7.8(14)(F)(iv).

The amendments are adopted under Texas Education Code, Chapter 61, Subchapters G and H, which provides the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas.

§7.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic Associate Degree Program--A grouping of courses designed to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts and the associate of science degrees.

(2) Accreditation--The status of public recognition that an accrediting agency grants to an educational institution.

(3) Accrediting Agency--A legal entity that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions.

(4) Agent--A person employed by or representing a postsecondary educational institution that does not have a Certificate of Authorization or Certificate of Authority, within or without Texas who:

(A) solicits any Texas student for enrollment in the institution (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas);

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) Alternative Certificate of Authority--A type of Certificate of Authority for approval of postsecondary institutions, with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.

(6) Applied Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts and the associate of applied science degrees.

(7) Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, the associate of science, the associate of applied arts and the associate of applied science.

(8) Board--The Texas Higher Education Coordinating Board.

(9) Board Staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.

(10) Career School or College--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by Texas Education Code §132.002 or §7.4 of this chapter (relating to Standards for Operations of Institutions), and:

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

(11) Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.

(12) Certificate of Authority--The Board's approval of postsecondary institutions (other than exempt institutions), with operations in the State of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.

(13) Certificate of Authorization--The Board's acknowledgment that an institution is qualified for an exemption from the regulations in this subchapter.

(14) Certificate of Registration--The Board's approval of an agent to solicit students on behalf of a private postsecondary educational institution in the State of Texas.

(15) Certification Advisory Council--

(A) Council to advise the Board on standards and procedures related to certification of private, nonexempt postsecondary educational institutions, and to assist the Commissioner in the examination of individual applications for Certificates of Authority, and to perform other duties related to certification that the Board finds to be appropriate.

(B) The council shall consist of six members with experience in higher education, three of whom must be drawn from exempt private postsecondary institutions in Texas.

(C) The members shall be appointed for two year fixed and staggered terms.

(16) Change of Ownership or Control--Any change in ownership or control of a career school or college or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college is considered to have changed:

(i) in the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) in the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(17) Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(18) Classification of Instructional Programs (CIP) Code--The four (4) or six (6)-digit code assigned to an approved degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(19) Clinical Internship--This learning method, also known as "clinicals," encompasses all site-specific health professions experiential learning. Clinicals include site experiences for medical, nursing, allied health, and other health professions degree programs.

(20) Commissioner--The Commissioner of Higher Education.

(21) Concurrent Instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(22) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate," "bachelor's," "master's," "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(23) Educational or Training Establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(24) Exempt Institution--An institution that is accredited by an agency recognized by the Board under §7.6 of this chapter (relating to Recognition of Accrediting Agencies), is defined as a "private or independent institution of higher education" under Texas Education Code, §61.003(15), or a career school or college that applies for and is declared exempt under this chapter, by the Texas Workforce Commission as described in Texas Education Code, §61.303(a), or Texas Education Code Chapter 132, respectively. Exempt institutions may still have to comply with certain Board rules.

(25) Experiential Learning--Process through which students develop knowledge, skills, and values from direct experiences outside an institution's classrooms. Experiential learning encompasses a variety of activities including, but not limited to, internships, externships, practicums, clinicals, field experience, or other professional work experiences.

(26) Fictitious Degree--A counterfeit or forged degree or a degree that has been revoked.

(27) Fraudulent or Substandard Degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a Certificate of Authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.12 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a Certificate of Authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.12 of this chapter, determines is not the equivalent of an accredited or authorized degree.

(28) Internship--This learning method encompasses all non-clinical site experiential learning.

(29) Occasional Courses--Courses offered not more than twice at any given location in the state.

(30) Out-of-State Public Postsecondary Institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(31) Person--Any individual, firm, partnership, association, corporation, enterprise, or other private entity or any combination thereof.

(32) Physical Presence--

(A) While in Texas a representative of the school or a person being paid by the school who conducts an activity related to postsecondary education, including for the purposes of recruiting students (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas), teaching or proctoring courses including internships, clinicals, externships, practicums, and other similarly constructed educational activities (excluding those individuals that are involved in teaching courses in which there is no physical contact with Texas students or in which visiting students are enrolled), or grants certificates or degrees; and/or

(B) The institution has any location within the State of Texas which would include any address, physical site, telephone number, or facsimile number within or originating from within the boundaries of the State of Texas. Advertising to Texas students, whether through print, billboard, internet, radio, television, or other medium alone does not constitute a physical presence.

(33) Postsecondary Educational Institution--An educational institution which:

(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(34) Private Postsecondary Educational Institution--An institution which:

(A) is not an institution of higher education as defined by Texas Education Code §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has an agent or representative presence in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

(35) Program or Program of Study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(36) Protected Term--The terms "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

(37) Provisional Certificate of Authorization--A mechanism to provide 15 months of authority to operate in Texas under existing Board-recognized accreditor authority for another existing campus (either in-state or out-of-state) while working to have final approval of the new Texas campus by the Board-recognized accreditor. Failure to obtain Board-recognized accreditor approval within the 15-month time frame for the new Texas campus will result in termination of the Provisional Certificate of Authorization for the new campus which must then terminate operations until such time as the institution obtains a Certificate of Authority or a Certificate of Authorization through approval of a Board-recognized accreditor for the new campus. The Provisional Certificate of Authorization is valid for a period of 15 months from the date of issuance. The provisions under which the certificate was issued will be outlined in the Provisional Certificate of Authorization letter that accompanies the certificate. Additional Provisional Certificates of Authorization will not be issued.

(38) Reciprocal State Exemption Agreement--An agreement entered into by the Board with an out-of-state state higher education agency or higher education system for the purpose of creating a reciprocal arrangement whereby that entity's institutions are exempted from the Board oversight for the purposes of distance education. In exchange, participating Texas public or private institutions of higher education as defined in Texas Education Code §61.003 would be exempted from that state's oversight for the purposes of distance education.

(39) Recognized Accrediting Agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(40) Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(41) Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

(42) Single Point of Contact--An individual who is designated by an institution as the person responsible for receiving and conveying information between an institution and the Board or Board staff. The Board will direct all communications regarding an institution to the Single Point of Contact. Institutions must inform the Board of changes in the designated Single Point of Contact within 30 days of change.

(43) Substantive Change--Any change in principal location, ownership, or governance of institution, change in accrediting agency or final action by an accrediting agency changing such institution's status with such accrediting agency, change in degree- or credential-level for an approved program, or addition of new programs, degrees or credentials offered.

(44) Visiting Student--A student pursuing a degree at an out-of-state institution (i.e., home institution) with no physical presence in Texas who has permission from the home institution and a Texas institution, which is either exempt from Board rules or currently in compliance with Board rules, to take specific courses at the Texas institution. The two institutions have an agreement that courses taken at the Texas institution will transfer back to the home institution.

§7.8. Institutions Not Accredited by a Board-Recognized Accreditor. An institution which is not accredited by a Board-recognized accreditor and which does not meet the definition of institution of higher education contained in Texas Education Code, §61.003, must follow either the Certificate of Authority process or Alternative Certificate of Authority process in paragraphs (1) - (14) of this section in order to offer degrees or courses leading to degrees in the state of Texas. Institutions are encouraged to contact the Board staff before filing a formal application.

(1) Certificate of Authority.

(A) Eligibility--The Board will accept applications for a Certificate of Authority only from those institutions:

(i) proposing to offer a degree or credit courses alleged to be applicable to a degree; and

(ii) which meet one of the following conditions:

(I) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a non-degree-granting institution for a minimum of two (2) years;

(II) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a degree-granting institution and wishes to open a new campus;

(III) has been legally operating as a degree-granting institution in another state for a minimum of four (4) years and can verify compliance with all applicable laws and rules in that state; or

(IV) held an Alternative Certificate of Authority for one year.

(B) To be considered by the Board as operating, means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a Certificate of Authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety bond, assignment of account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions, which is:

(i) In a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the guaranteeing entity will assume.

(2) Application for Certificate of Authority.

(A) Applications must be submitted with an original and four (4) copies and accompanied by the fee described in paragraph (9) of this section.

(B) The application form for the Certificate of Authority may be found on the Board's website.

(C) Documentary evidence of compliance with paragraph (1)(A)(ii) of this section must be filed with the application.

(D) Information regarding each degree or course leading to a degree which the institution proposes to offer.

(E) Name and contact information of the designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions).

(3) Authorization Process.

(A) An institution must submit an application to the Board to be considered for a Certificate of Authority to offer specific degree(s), and courses which may be applicable toward a degree, in Texas.

(B) Each institution must have either a Letter of Exemption or Certificate of Approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132.

(C) An institution must submit detailed information describing the manner in which the institution complies with each of the Standards of Operations of Institutions contained in §7.4 of this chapter (relating to Standards for Operations of Institutions).

(D) Institutions accredited by entities which are not recognized by the Board must submit all accrediting agency reports and any findings and institutional responses to such reports and findings.

(E) Each institution must provide the required fee set by the Commissioner on a biennial basis which is necessary to cover the costs of the application review, site review team, and travel, meals, lodging and consulting fees for the review.

(F) Based upon the information contained in the application, the Commissioner or his/her designee shall determine whether a site review team is necessary.

(G) If a site review team is required, the Commissioner or his/her designee shall identify a site review team of no less than three individuals, all of whom have experience and knowledge in postsecondary education.

(H) An institution must be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions. The conditions found at the institution as of the date of the on-site evaluation visit will provide the basis for the visiting team's evaluation and report, the Certification Advisory Council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a Certificate of Authority.

(I) The site review team shall conduct an on-site review of the institution and prepare a report regarding the institution's ability to meet the Standards of Operation.

(J) The institution shall have thirty (30) days in which to respond to the report.

(K) The Certification Advisory Council shall review the report and the institution's response and make a recommendation regarding disposition to the Commissioner.

(L) Upon receipt of the Council's recommendation, the Commissioner shall make his/her recommendation regarding the application to the Board.

(M) After review of the Commissioner's and Council's recommendations, if the Board approves the application, the Commissioner shall immediately have prepared a Certificate of Authority containing the issue date, a list of the approved degree(s) or courses leading to degrees, and the period for which the Certificate is valid.

(N) After review of the Commissioner's and Council's recommendations, if the Board does not approve the application, the Commissioner shall immediately notify the institution of the denial and the reasons for the denial.

(O) Upon denial, the institution may not reapply for a period of one hundred eighty (180) days.

(4) Terms and Limitations of a Certificate of Authority.

(A) The Certificate of Authority to grant degrees is valid for a period of two (2) years from the date of issuance.

(B) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in subparagraph (C) of this paragraph. Therefore, the institution awarded a Certificate of Authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the Certificate of Authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(C) An institution may be granted consecutive Certificates of Authority for no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a Board-recognized accrediting agency.

(5) Institutions holding a Certificate of Authority will be required to:

(A) furnish a list of their agents to the Board;

(B) maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board; and

(C) report any substantive change.

(6) Grounds for Revocation of Certificate of Authority.

(A) The Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission.

(B) Institution fails to comply with substantive change notification and data reporting requirements as outlined in §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Data Reporting), respectively.

(C) Institution offers degrees for which it does not have Board approval.

(D) Institution fails to maintain the Standards of Operation as defined in §7.4 of this chapter.

(E) Failure to comply with paragraph (3)(D) of this section.

(7) Revocation of Certificate of Authority to Offer Degrees in Texas.

(A) Board notifies institution of grounds for revocation as outlined in paragraph (6) of this section.

(B) Within ten (10) days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption, and/or submit data as required by §7.13 of this chapter.

(C) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(D) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(E) Until the Certificate of Authority is reinstated, the institution may not grant degrees, offer courses leading to degrees, or receive payments from students for courses which may be applicable toward a degree.

(8) Reapplication After Revocation of Certificate of Authority.

(A) The institution will not be eligible to reapply for a period of one hundred eighty (180) days.

(B) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

(C) The period of time during which the institution does not hold a Certificate of Authority shall not be counted against the eight (8) year period within which the institution must achieve accreditation from a recognized accrediting agency absent sufficient cause, as described in paragraph (4)(C) of this section; the time period begins to run again upon reinstatement.

(9) Fees Related to Certificates of Authority.

(A) Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for Certificates of Authority, which shall be equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members, if an on-site review is conducted.

(B) Each biennium, the Commissioner shall also set the fees for amendments to Certificates of Authority.

(C) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(10) Renewal of Certificate of Authority.

(A) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current Certificate of Authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in paragraph (9) of this section.

(B) The application for renewal of the Certificate of Authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the evaluation will include the institution's record of improvement and progress toward accreditation.

(C) An institution may be granted consecutive Certificates of Authority for no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency.

(D) Subject to the restrictions of paragraph (3) of this section, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards.

(11) Amendments to a Certificate of Authority.

(A) An institution which wishes to amend an existing program of study to award a new or different degree during the period

of time covered by its current certificate may file an application for amendment, on forms provided by the Board upon request. An institution may begin operating such a program upon filing the application, and the application shall be deemed to be granted if not rejected by the Board within one hundred twenty (120) days.

(B) Applications for amendments shall be accompanied by the fee described in paragraph (9) of this section.

(C) Unless the Board finds that the new program of study does not meet the required standards, the Board shall amend the institution's certificate accordingly.

(D) A change of degree level would require an amended Certificate of Authority prior to beginning the program.

(12) Authority to Represent Transferability of Course Credit. Any institution as defined in §7.3 of this chapter, whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(A) the other institution is named in such representation, and is accredited by a recognized accrediting agency or has a Certificate of Authority;

(B) the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and

(C) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' governing boards in writing, and is filed with the Board.

(13) Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003. The agreement shall be in writing, shall be subject to Board approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authorization for an institution is automatically withdrawn when the institution closes. The Commissioner may grant to an institution that has a degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(i) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(ii) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board.

(14) Alternative Certificate of Authority. In lieu of the standard Certificate of Authority requirements for institutions and their agents described in paragraphs (1) - (13) of this section, an institution may obtain an Alternative Certificate of Authority to issue degrees as provided by this subsection. Alternative Certificates of Authority shall be issued by the Commissioner and are temporary, being valid for twelve (12) months, after which a regular Certificate of Authority shall be required. A site visit shall be conducted by Board staff during the initial twelve (12) month period.

(A) Surety Instrument Requirement. At the time application is made for an Alternative Certificate of Authority, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Board a surety bond or surety alternative which meets the requirements set forth in these sections. Schools located in Texas each shall file one bond or surety alternative covering the school and its agents.

(i) The amount of the bond or other allowable surety instrument submitted to the Board with an application for an Alternative Certificate of Authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms.

(ii) A school, whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students, shall be noncompliant with these sections, and, if, after ten (10) working days from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its Alternative Certificate of Authority.

(iii) Following the initial filing of the surety bond with the Board, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than twenty-five thousand dollars ($25,000).

(iv) The institution shall include a proposal in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the bond or surety alternative.

(v) In order to be approved by the Board, a surety bond must be:

(I) An original bond;

(II) Executed by the applicant and by a surety company authorized to do business in Texas;

(III) In a form acceptable to the Board; and

(IV) Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation.

(vi) In lieu of a surety bond, an applicant may file with the Board an assignment of savings account that:

(I) Is in a form acceptable to the Board;

(II) Is executed by the applicant; and

(III) Is executed by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation.

(vii) In lieu of a surety bond, an applicant may file with the Board a certificate of deposit that:

(I) Is issued by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation;

(II) Is either:

(-a-) Payable to the Board;

(-b-) In the case of a negotiable certificate of deposit, is properly assigned without restriction to the Board; or

(-c-) In the case of a non-negotiable certificate of deposit, is assigned to the Board by assignment in a form satisfactory to the Board.

(viii) In lieu of a surety bond, an applicant may file with the Board an irrevocable letter of credit that:

(I) Is in a form acceptable to the Board; and

(II) Is conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation.

(ix) In lieu of a surety bond, an applicant may file with the Board a properly executed participation contract with a private association, partnership, corporation or other entity whose membership is comprised of postsecondary institutions, which:

(I) Is in a form acceptable to the Board; and

(II) Is conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

(x) Whenever these sections require a document to be executed by an applicant the following shall prevail:

(I) If the applicant is a corporation, the document must be executed by the president of the corporation or persons designated by the corporate board.

(II) If the applicant is a limited liability corporation the document must be executed by the members.

(III) If the applicant is a partnership, the document must be executed by all general partners.

(IV) If the applicant is an individual, the document must be signed by the individual.

(V) If the applicant is a state agency, the document must be signed by the Director of that Department.

(VI) If the applicant is a local government, the document must be signed by the mayor or board president.

(xi) Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution and resources equal to or exceeding the maximum bonds required of all single schools.

(xii) A school applying for an Alternative Certificate of Authority shall be exempt from the surety instrument requirement if it can demonstrate a United States Department of Education composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.1 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two (2) years.

(B) Application and Statement. Institutions seeking an Alternative Certificate of Authority are urged to obtain informal guidance from Board staff before filing a formal application. The Board will accept applications for an Alternative Certificate of Authority only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.

(C) An institution seeking an Alternative Certificate of Authority shall submit to the Board a completed application, which must demonstrate it meets, or has the ability to meet, depending on circumstances, the standards set out in §7.4 of this chapter; a signed and dated affirmation statement, acknowledging compliance with certification criteria set forth in this section; and a notarized attestation statement signed by the chief executive officer or equivalent. The application form shall contain:

(i) The name and address of the institution and its purpose;

(ii) The names of the sponsors or owners of the institution;

(iii) The regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution;

(iv) The names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(v) The names of faculty who have been retained, their area(s) of teaching, and their degrees held;

(vi) The types of degrees to be awarded and a list of courses that may be included in each degree program; and

(vii) The location of any facilities maintained or being constructed and a list of potentially hazardous equipment which requires a federal or state government license to operate, if any has been acquired, that is to be used by students in the teaching process.

(D) Institutions shall certify that they maintain a list of their agents as defined in §7.3 of this chapter and have policies to ensure that their agents are of good character and provide accurate information to prospective students and their families, but such agents are not required to register with the Board or submit a fee.

(E) Applications must be submitted with an original and four copies and accompanied by the required fee. Alternative Certificate of Authority fees shall be five hundred dollars ($500) more than the fee for a regular Certificate of Authority, as established in paragraph (9) of this section.

(F) Board's Review of Applications.

(i) Within ninety (90) days of receipt of a complete application, Board staff will review said application and recommend to the Commissioner either approval or denial of the application.

(ii) Within one hundred twenty (120) days of receipt of a complete application, the Commissioner shall either award a one-year Alternative Certificate of Authority or deny the application.

(iii) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title.

(iv) Upon denial, or after the institution has exhausted all appeal options and has not prevailed, the institution may not reapply for a period of one hundred eighty (180) days.

(G) Terms and Limitations of an Alternative Certificate of Authority.

(i) The Alternative Certificate of Authority to grant degrees is valid for one (1) year from the date of issuance.

(ii) The institution shall notify the Board at least ten (10) working days prior to the start of the first class of its first year schedule. Board staff shall visit the institution and interview both staff and students at least once during the first year.

(iii) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in paragraph (10)(C) of this section. An institution awarded an Alternative Certificate of Authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the Alternative Certificate of Authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are usually mentioned, including the institution's catalog and the home page of the institution's Internet website.

(iv) Approval of the application grants the institution the authority to award degrees or to enroll students for courses that may be applicable toward a degree only for those programs approved by the Alternative Certificate of Authority. Separate program approval shall be required for each additional degree program in accordance with this chapter.

(v) The Commissioner may revoke an institution's Alternative Certificate of Authority to grant degrees at any time if the Commissioner finds that:

(I) Any statement contained in an application for the certificate is untrue;

(II) The institution has failed to maintain the standards of the Board, as described herein, on the basis of which the certificate was granted;

(III) Advertising or representations made on behalf of the institution is deceptive or misleading;

(IV) The institution has offered degrees or courses leading to degrees for which they have not been approved in an Alternative Certificate of Authority; or

(V) The institution has violated any provision of this subchapter.

(H) Continuing Operations after One Year.

(i) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current Alternative Certificate of Authority, an institution, if it desires to continue operations, shall make application to the Board for a Certificate of Authority following the process in paragraph (10) of this section. Only one Alternative Certificate of Authority will be granted.

(ii) The application will be evaluated in the same manner as that prescribed for evaluation of an initial application.

§7.11. Changes of Ownership and Other Substantive Changes.

(a) Change of Ownership or Control for Career Schools and Colleges. In the event of a change in ownership or control of a career school or college, the Certificate of Authority or Certificate of Authorization is automatically withdrawn unless the institution meets the requirements of this section.

(b) The Commissioner may authorize the institution to retain the Certificate of Authority or Certificate of Authorization during and after a change of ownership or control, provided that the institution notifies Board staff of the impending transfer in time for staff to receive, review, and approve the documents listed in paragraphs (1) - (3) of this subsection and provided that the following conditions are met:

(1) The institution must submit acceptable evidence that the new owner is complying with all Texas Workforce Commission requirements regarding the purchase or transfer of ownership of a career school or college;

(2) The institution must submit an acceptable written statement of assurance that the new owner understands and undertakes to fully comply with all applicable Board rules, regulations, and/or policies; and

(3) The institution must submit satisfactory evidence of financial ability to adequately support and conduct all approved programs. Documentation shall include but may not be limited to independently audited financial statements and auditor's reports.

(c) If the institution does not meet the conditions outlined under this section prior to completion of transfer of ownership or control and the institution loses its Certificate of Authority or Certificate of Authorization, the new owner(s) shall submit a new application for a Certificate of Authority as outlined under §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor) or a new application for a Certificate of Authorization as outlined under §7.7 of this chapter (relating to Institutions Accredited by Board-Recognized Accreditors).

(d) Any modification of an approved degree program that results from a change of ownership or control constitutes a program revision. Requests for approval of program revisions or other substantive changes as defined in §7.3 of this chapter (relating to Definitions) shall conform to the procedures and requirements contained in §7.7(1) and §7.8(11) of this chapter.

(e) If the ownership or control of a career school or college is transferred within, among, or between different subsidiaries, branches, divisions, or other components of a corporation and if said transfer in no way diminishes the career school or college's administrative capability or educational program quality, the Commissioner may permit the school to retain its Certificate of Authority or Certificate of Authorization during the transfer period. In such cases, the career school or college shall fully comply with all provisions outlined in this section.

(f) All notifications regarding changes of ownership or other substantive changes should be provided to the Board via the institution's designated Single Point of Contact.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300481
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 427-6114

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES
SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §9.93

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §9.93, concerning Presentation of Requests and Steps for Implementation of New Degree and Certificate Programs in Career Technical/Workforce Education, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8427).

The amendment specifies that an institution may not receive approval for a new associate of applied science degree program that the institution previously offered which was closed during the last ten years due to low productivity.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Education Code, Chapter 61, which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.102, 13.104, 13.106, 13.107

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§13.102, 13.104, 13.106 and 13.107, pertaining to formula funding for repeated and excess hours of undergraduate students and the limitation on formula funding for developmental and remedial courses, without changes to the proposed text as published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8258).

Specifically, a definition of non-course-based developmental education interventions is added to the definitions in §13.102. Section 13.104 and §13.106 will be amended to indicate that hours attempted in non-course-based developmental education interventions are allowable exemptions to the excess and repeated hours rules.

The proposed amendment to §13.107 indicates that semester credit hours (SCH) attempted in non-course-based developmental education interventions fall under the limitation on formula funding for developmental education hours. Public two-year colleges may submit up to 27 SCH attempted in developmental education classes and interventions per student; public universities may submit up to 18 SCH attempted in developmental education classes and interventions per student. The amendment also allows community colleges, public technical colleges, and public state colleges to convert contact hours to semester credit hours for the purpose of tracking funded and unfunded semester credit hours in developmental education interventions. Institutions will not be required to make a conversion, but may choose to do so.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Education Code, §61.0595, which provides the Coordinating Board with authority to adopt rules relating to funding of excess undergraduate credit hours and Texas Education Code, §51.307, which allows the Coordinating Board to adopt rules for the administration of required and elective courses, including the Texas Success Initiative.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.226, 22.228, 22.231, 22.234, 22.236

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§22.226, 22.228, 22.231, 22.234, and 22.236, concerning Toward EXcellence, Access, and Success (TEXAS) Grant Program, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8428).

Specifically, changes to §22.226 add definitions for "general academic teaching institution" and "priority model" (terms that are relevant to the TEXAS Grant priority model, mandated by the 82nd Legislature in Senate Bill 28, which goes into effect with recipients selected in Spring 2013 for fall awards); and adds a definition for "honorably discharged" (a term relevant to new language in Senate Bill 28 that authorizes certain Texas veterans to qualify for TEXAS Grant initial year awards, effective fall 2013). A definition for "committee" is added for referencing the TEXAS Grant Oversight Committee, which is mentioned in new §22.242, which is simultaneously adopted in this issue of the *Texas Register.*

Amendments to §22.228(a) indicate the language in this subsection applies to persons who receive initial TEXAS Grant awards prior to fall 2013 and to persons who receive such awards while enrolling in public community colleges, technical colleges, or the Lamar Institute of Technology in fall 2013 or later.

Amendments to §22.228(a)(6)(B) clarify the eligibility of persons on track to graduate high school while meeting program requirements at the time their eligibility for the award was determined but who then failed to complete those requirements. New §22.228(a)(6)(D) adds wording regarding eligibility for persons who were on track to acquire an associate's degree but then failed to do so (a new provision from Senate Bill 28, mentioned above).

The amendments to §22.228 add a new subsection (b) which reflects the new provisions of the TEXAS Grant priority model, adopted with the aforementioned Senate Bill 28. These provisions apply to persons who graduate high school on or after May 1, 2013, and enroll in general academic teaching institutions. The provisions indicate that priority in selecting recipients is to be given to persons who meet two of four additional academic preparation requirements. New language also authorizes certain Texas veterans to qualify to compete for initial year TEXAS Grant awards.

Amendments to §22.228(c)(8) extend the conditions for continuation awards for persons whose first awards were based on being on track to meet program requirements to include persons on track to acquire associate's degrees.

The amendments to §22.228 add a new subsection (d) which provides that the Coordinating Board shall give priority to awarding TEXAS grants to those students whose expected family contribution does not exceed 60 percent of the statewide average tuition and fees for general academic teaching institutions (a new provision from Senate Bill 28, mentioned above).

Amendments to §22.231(a) clarify that persons enrolled for fewer than 6 semester credit hours cannot receive TEXAS Grant awards.

Amendments to §22.234(b)(7) confirm persons enrolled for fewer than 6 hours, even under hardship conditions, cannot receive grants. Amendments to §22.234(e) adjust the award prorations to properly reflect award amounts for various levels of enrollment.

Amendments to §22.236(a)(1) indicate allocations of funds for initial year awards are not to be impacted by an institution's number of awards made on the basis of the priority model (a new provision from Senate Bill 28, mentioned above).

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt rules necessary to administer the TEXAS Grant Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 427-6114

19 TAC §22.241, §22.242

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §22.241 and §22.242, concerning Toward EXcellence, Access, and Success (TEXAS) Grant Program. Section 22.241 is adopted without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8431). Section 22.242 is adopted with changes to the proposed text as published to make a minor grammatical change in the section title.

Specifically, the new sections add language to implement legislative changes mandated by the 82nd Legislature in Senate Bill 28.

Section 22.241 outlines provisions for making awards in the future to students who were unable to receive grants as entering freshmen because of insufficient funding for the program.

Section 22.242 describes new reporting requirements for the TEXAS Grant Program. The new reports are to be provided annually to the TEXAS Grant Oversight Committee, beginning with reports on Fiscal Year 2014 program operations.

No comments were received regarding the proposed new sections.

The new sections are adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt rules necessary to administer the TEXAS Grant Program.

§22.242. Reports to the TEXAS Grant Oversight Committee.

No later than September 1 of each year, and beginning with awards made for the fall 2013 semester, the Board shall provide a report to the committee that will include the following information about the TEXAS Grant awards for the three preceding state fiscal years:

(1) allocations, by institution, separately for initial and continuation awards;

(2) number of awards received, by race, ethnicity and family contribution;

(3) number of awards received by race, ethnicity and family contribution, separately for persons who received awards on the basis of program requirements outlined in §22.228 of this title (relating to Eligible Students); and

(4) the persistence, retention, and graduation rates for award recipients.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300485
Bill Franz
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 70. TECHNOLOGY-BASED INSTRUCTION

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE TEXAS VIRTUAL SCHOOL NETWORK (TxVSN)

19 TAC §§70.1001, 70.1003, 70.1005, 70.1007, 70.1009, 70.1011, 70.1013, 70.1015, 70.1017, 70.1019, 70.1021, 70.1023, 70.1025, 70.1027, 70.1029, 70.1031, 70.1033, 70.1035

The Texas Education Agency (TEA) adopts new §§70.1001, 70.1003, 70.1005, 70.1007, 70.1009, 70.1011, 70.1013, 70.1015, 70.1017, 70.1019, 70.1021, 70.1023, 70.1025, 70.1027, 70.1029, 70.1031, 70.1033, and 70.1035, concerning the Texas Virtual School Network (TxVSN). New §§70.1001, 70.1005, 70.1007, 70.1011, 70.1013, 70.1023, 70.1025, 70.1027, 70.1029, and 70.1035 are adopted with changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8911). New §§70.1003, 70.1009, 70.1015, 70.1017, 70.1019, 70.1021, 70.1031, and 70.1033 are adopted without changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8911) and will not be republished. The adopted new rules provide guidance for school districts, charter schools, and other entities participating in the TxVSN, in accordance with the Texas Education Code (TEC), Chapter 30A.

In 2003, the 78th Texas Legislature established the electronic course program, allowing districts to offer electronic courses through a full-time online program. The TEC, Chapter 30A, State Virtual School Network, added by the 80th Texas Legislature, 2007, provided for the establishment of a state virtual school network to provide supplemental online courses to high school students. In 2009, House Bill 3646, 81st Texas Legislature, incorporated the electronic course program under the state virtual school network.

The TEC, §30A.051(b), authorizes the commissioner of education to adopt rules necessary to implement the state virtual school network, including the establishment of requirements for an informed choice report, procedures governing the verification of teacher professional development, and a standard agreement governing the payment of fees for courses taken through the state virtual school network. Adopted new 19 TAC Chapter 70, Subchapter AA, establishes the following provisions.

Adopted new §70.1001, Definitions, defines applicable words and terms. In response to public comment, the following changes were made at adoption.

The definition of a TxVSN receiver district was modified to add specific reference to the TxVSN statewide course catalog.

The definition of the TxVSN statewide course catalog was modified to delete the language "for students in Grades 8-12."

Adopted new §70.1003, Texas Virtual School Network Governance, establishes the administrative functions and responsibilities related to the TxVSN program. No changes were made to this rule since published as proposed.

Adopted new §70.1005, Texas Virtual School Network Course Requirements, addresses required criteria for electronic courses offered through the TxVSN and conditions an entity must meet to offer a course for submission. The adopted new rule also outlines the appeals process for courses that are not approved. In response to public comment, the following change was made at adoption.

Accessibility requirements in subsection (a)(1)(F) were modified to strike "the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines" after determining that compliance with the U.S. Rehabilitation Act, §508, and the TxVSN accessibility guidelines was sufficient.

Adopted new §70.1007, Texas Virtual School Network Provider District Eligibility and Program Requirements, addresses the eligibility requirements for entities to serve as provider districts in the TxVSN statewide course catalog. In response to public comment, the following changes were made at adoption.

Subsection (a) was modified to add "statewide course catalog" before "provider districts" for clarification.

Subsection (b)(2) was modified to change "acceptance" to "enrollment" for clarification.

Adopted new §70.1009, Texas Virtual School Network Online School Eligibility, sets forth the eligibility criteria for an entity to serve as a TxVSN online school. No changes were made to this rule since published as proposed.

Adopted new §70.1011, Texas Virtual School Network Online School Program Requirements, establishes the program requirements for TxVSN online schools, including application for approval to serve specific grade levels and approval for

maximum enrollments. In response to public comment, the following changes were made at adoption.

Subsection (e)(13)(A) was modified to clarify fiscal documentation requirements.

Subsections (f) and (g) were modified for clarification by striking the phrase "School districts and charter schools serving as."

Subsections (f)(3) was modified for consistency with current practice by replacing the word "reimburse" with "subsidize or reimburse." Additionally, subsection (g)(3)(C) was modified to replace the word "reimbursement" with "subsidy or reimbursement."

Adopted new §70.1013, Texas Virtual School Network Student Eligibility, addresses the criteria for students to enroll in courses offered through the TxVSN, including full-time enrollment. In response to public comment, the following changes were made at adoption.

Subsection (b)(1) was modified to align more closely with statute by striking the phrase "for at least one full grading period."

New subsections (c) and (d) were added to provide for a ten-day provisional enrollment pending evidence of eligibility.

Adopted new §70.1015, Texas Virtual School Network Enrollment, Advancement, and Withdrawal, establishes enrollment requirements for students taking courses through the TxVSN statewide course catalog or the online schools program. The adopted rule also establishes guidelines for withdrawal from and successful completion of TxVSN courses. No changes were made to this rule since published as proposed.

Adopted new §70.1017, Texas Virtual School Network Compulsory Attendance, establishes that students are not required to be in physical attendance while participating in TxVSN courses and that if a student successfully completes a course or program, the student is considered to have met all attendance requirements for that course or program. No changes were made to this rule since published as proposed.

Adopted new §70.1019, Public or Private Institutions of Higher Education, establishes guidelines under which a Texas public or private institution of higher education could serve students across the state through the TxVSN. No changes were made to this rule since published as proposed.

Adopted new §70.1021, Private Entities Providing Online Courses, clarifies that private entities supplying courses through the TxVSN are not accredited or approved by the TEA or the State of Texas. No changes were made to this rule since published as proposed.

Adopted new §70.1023, Accountability, addresses the requirement that public school students enrolled in courses offered through the TxVSN Online School (OLS) program take all required state assessments. The adopted rule also establishes that school districts and charter schools participating in the TxVSN OLS program will be included in the state accountability system. In response to public comment, the following changes were made at adoption.

Subsection (a) was modified to remove the phrase "courses through" to make clear that accountability requirements apply to both the TxVSN OLS program and the TxVSN statewide course catalog.

Subsection (b) was modified to change "TxVSN" to "TxVSN Online School (OLS) program" for clarity.

Adopted new §70.1025, Statewide Course Catalog Fees, sets forth criteria related to fees that may be charged for enrollment in courses offered through the TxVSN. In response to public comment, the section was reorganized for clarity and to distinguish between course cost and fees, as follows.

New subsection(a), previously proposed as subsection (c)(2), was added to clarify that a TxVSN course cost, rather than a fee, may not exceed the lesser of the cost of providing the course or $400. Subsequent subsections were re-lettered accordingly.

Subsection (b), previously proposed as subsection (a), was modified to address when a student may be charged the course cost for enrollment, including a student who enrolls in a greater than normal course load or who enrolls during the summer.

Subsection (c) was modified to address provisions relating to charging the course cost to a student who is not enrolled in a school district or charter school.

New subsection (d), previously proposed as subsection (c)(1), was added with no change to the proposed language.

New subsection (e), previously proposed as subsection (a)(1) and (2), was added to address when a student may be charged a nominal fee for enrollment, including students who enroll in a greater than normal course load or who are under supervision of the juvenile probation department or state agency.

Subsection (f), previously proposed as subsection (d), was not changed.

Adopted new §70.1027, Requirements for Educators of Electronic Courses, establishes the professional development requirements for teachers of online courses offered through the TxVSN and requirements for districts and charter schools regarding the maintenance of records documenting the completion of professional development. In response to public comment, the following change was made at adoption.

Subsection (a)(1)(A) was modified to add "or" at the end of the statement to clarify that a teacher must meet one of the three criteria specified in subsection (a)(1)(A)-(C).

Adopted new §70.1029, Texas Virtual School Network Participation and Performance Standards, addresses the standards a school district or charter school must meet in order to continue to participate in the TxVSN and establishes the conditions under which a school district or charter school might have its participation in the TxVSN revoked. In response to public comment, the following change was made at adoption.

Paragraph (3) was modified to change "and" to "or" to clarify that any one of the conditions may result in revocation of participation in the TxVSN.

Adopted new §70.1031, Informed Choice Reports, identifies the information to be included on required informed choice reports for each electronic course offered through the TxVSN. No changes were made to this rule since published as proposed.

Adopted new §70.1033, Local Policy Regarding Electronic Courses, addresses the requirement that each school district and charter school adopt a policy regarding student enrollment in the TxVSN statewide course catalog. No changes were made to this rule since published as proposed.

Adopted new §70.1035, Rights Concerning the Texas Virtual School Network, sets forth requirements regarding notification to parents and students of opportunities to enroll in courses offered through the TxVSN and outlines student rights regarding enroll-

ment. The adopted new rule also outlines the appeal process for a school district's or charter school's decision to deny a request to enroll a student in an electronic course offered through the TxVSN. In response to public comment, the following change was made at adoption.

Subsection (e)(3) was modified to clarify options a district may use if required to enroll a student who was unreasonably denied the opportunity to enroll in an electronic course.

Entities participating as providers in the TxVSN must provide certain information, including submitting courses for review, notifying parents and students of a student's acceptance to participate in a TxVSN online, and making informed choice reports available.

Participating school districts and charter schools will be required to retain all financial and programmatic records specific to the TxVSN contract, including documentation of teacher certification and professional development, documentation of students' successful completion, verification of compulsory attendance, documentation of fiscal management, records that support program of instruction, and records that document student participation in the TxVSN online school and grades earned.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began November 9, 2012, and ended December 10, 2012. Following is a summary of the public comments received and the corresponding agency responses regarding proposed new 19 TAC Chapter 70, Technology-Based Instruction, Subchapter AA, Commissioner's Rules Concerning the Texas Virtual School Network (TxVSN).

Comment: Raise Your Hand Texas (RYHT) suggested that the agency maintain and publish a list of approved private providers for the TxVSN Online Schools (OLS) program and drop providers from the approved list if performance standards are not consistently met.

Agency Response: The agency disagrees and determined that the TEA does not have authority to approve private providers that partner with public school districts and charter schools to offer courses through the TxVSN.

Comment: RYHT stated that maintaining an established funding structure, where all funds flow through the school district, and not permitting public funds to be paid directly to private providers are consistent with current statute and RYHT recommendations.

Agency Response: The agency agrees and has determined that all funds for courses completed through the TxVSN are paid directly to a school district or charter school in accordance with TEC, Chapter 42.

Comment: Two TxVSN online schools stated that students attending a TxVSN online school are attending a full-time school required to provide services beyond single courses and should be funded in a comparable way to traditional schools with successful course completion reflected in the funding along with the other services provided to the student throughout the year. The commenters recommended adding a new section to read as follows, "§70.xxxx. Funding for a TxVSN Online School for Students Enrolled on a Full-Time Basis. (a) For students in grades 3-12, the TxVSN online school will earn funding according to the following conditions: (1) For a student who achieves successful program completion, 100% of the fully-weighted ADA earned by the student for the time he or she was enrolled in the TxVSN OLS. (2) For a student who was enrolled for more than ten days in an Academic Year but who fails to achieve successful program completion, 90% of the fully-weighted ADA earned by the student for the time he or she was enrolled in the TxVSN OLS. (3) For a student who was enrolled for ten or less day [sic], no funding is earned."

Agency Response: The agency disagrees. Current funding for TxVSN online schools is addressed in the *Student Attendance Accounting Handbook.* Additionally, the requirement for successful course completion is required by statute, TEC, §30A.153(a).

Comment: An online learning specialist stated that the proposed rules do not address credit recovery and other offerings through online learning platforms purchased and used by districts. The commenter recommended a committee be formed and decisions be made about standards that should be set for online credit recovery programs.

Agency Response: The agency provides the following clarification. The rules in 19 TAC Chapter 70, Subchapter AA, apply only to online courses offered through the TxVSN and not to computer assisted instructional programs or other distance learning courses.

Comment: Responsive Education Solutions stated that an alternative accountability system to measure schools that serve at-risk populations such as disciplinary alternative education programs, juvenile justice alternative education programs, residential facilities, and dropout recovery programs is needed.

Agency Response: This comment is outside of the scope of the proposed rulemaking.

Comment: Two TxVSN online schools recommended adding a definition to §70.1001 for "Successful TxVSN OLS 9-12 Program Completion." The commenters stated that a student taking courses through the statewide course catalog is different from a student enrolled in the TxVSN OLS program where funding is provided for all services, including guidance counselor and state testing administration. Funding and course completion for the TxVSN OLS program needs to be looked at in the context of a full-time school.

Agency Response: The agency disagrees and has determined that successful course completion for students taking high school courses is the same regardless of the component of the TxVSN in which the student is enrolled. In response to other comments, the agency has made other modifications to the definitions in §70.1001.

Comment: A TxVSN statewide course catalog provider district recommended adding to §70.1001(1) a description of blended learning models where school districts may provide opportunities during the school week for students to practice, work on projects, and receive individual tutoring support from the teacher of record. The commenter stated that research supports the benefits of blended learning models and a blended model made possible through a broadened definition of an electronic course could benefit a large number of students if a school district were to serve as both a TxVSN provider and receiver of the same course.

Agency Response: The agency disagrees and has maintained the language in §70.1001(1) as published as proposed. The

language of the rule is consistent with that in statute, TEC, §30A.001(4).

Comment: Two TxVSN online schools recommended revising the definition in proposed §70.1001(2) to read as follows, "Successful TxVSN Course Completion--The term that applies when a student taking a high school course through the TxVSN statewide course catalog has demonstrated academic proficiency of the content for a high school course and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s), sufficient to earn credit for the course." The commenters stated that the change is necessary to clearly define and distinguish between the TxVSN statewide course catalog and TxVSN OLS program.

Agency Response: The agency disagrees and has maintained the language in §70.1001(2), adopted as §70.1001(3). Successful course completion for students taking high school courses is the same regardless of the component of the TxVSN in which the student is enrolled.

Comment: The Texas Association of School Boards (TASB) stated that §70.1001(2) as proposed does not specify how an end-of-course (EOC) exam is included in the course grade, if the course is one for which an EOC assessment is required. The commenter suggested that the rule should specify whether an EOC assessment score must be figured into the final course grade calculation for the purposes of defining successful completion and if the final course grade does include the EOC score, then the text reflecting that this grade is solely assigned by the online teacher should be changed to reflect that the enrolling district must also calculate the EOC into the grade assigned by the online teacher to determine whether credit will be awarded, which ultimately affects the funding that the district will be entitled to receive.

Agency Response: The agency disagrees and has maintained the language in §70.1001(2), adopted as §70.1001(3). For courses taken through the TxVSN statewide course catalog, the TxVSN receiver district is responsible for calculating the EOC score into the course grade according to local policy. For courses taken through the TxVSN OLS program, the online school is responsible for calculating the EOC score into the course grade.

Comment: Two TxVSN online schools recommended modifying proposed §70.1001(3) to expand the TxVSN program to students in Kindergarten-Grade 2 instead of only Grades 3-8. The commenters stated that the change is consistent with legislative authorization to convey a virtual option to students in Kindergarten-Grade 2 as well as Grades 3-8 and would provide more options to families who need online school options for all their school-age children.

Agency Response: The agency disagrees and has maintained the language in §70.1001(3), adopted as §70.1001(4). TEC, §30A.151(f), specifies that a school district or charter school operating a TxVSN online school may receive funding for serving a grade level "at or above grade level three."

Comment: Texas Senator Leticia Van de Putte pointed out that proposed §70.1001(4) states "the TxVSN is comprised of two components, the statewide course catalog and the online school program." The senator stated that if the intent of the Texas Education Agency is that §70.1023 applies both to the TxVSN online school and the TxVSN statewide course catalog, the language should read as follows, "All Texas public school students enrolled in the Texas Virtual School Network (TxVSN) are required to take the statewide assessments as required in the Texas Education Code, §39.023."

Agency Response: The agency agrees that the removal of the reference to courses would make the rule more clear and has modified §70.1023 to read as follows, "All Texas public school students enrolled in the Texas Virtual School Network (TxVSN) are required to take the statewide assessments as required in the Texas Education Code, §39.023."

Comment: RYHT stated that the proposed rules are generally in alignment with current statute and the recommendations of RYHT, including that the agency maintain the administration and operation of virtual schools under the auspices of the Texas Virtual School Network as published as proposed in §70.1001(4) and §70.1003.

Agency Response: The agency agrees with the comment and has maintained the language as published as proposed.

Comment: Two TxVSN online schools recommended modifying proposed §70.1001(5) to add the phrase "for the statewide catalog" because the functions listed in the proposed rule relate to the statewide course catalog and not to the TxVSN OLS program.

Agency Response: The agency disagrees and has maintained the language in §70.1001(5), adopted as §70.1001(6). TxVSN central operations performs many of the same functions for the TxVSN statewide course catalog and the TxVSN OLS program.

Comment: Two TxVSN online schools recommended combining proposed §70.1001(6) and (7) for clarity. The revised definition would read as follows, "TxVSN online school (TxVSN OLS)--A full-time, virtual instructional program that is made available through an approved and eligible provider district and is designed to serve students in Grades 3-12 who are not regularly physically present at a school facility."

Agency Response: The agency disagrees and has maintained the language in §70.1001(6) and (7), adopted as §70.1001(7) and (8). The TxVSN OLS program and a TxVSN online school are separate terms and should be defined separately. Additionally, statute defines an electronic course offered through the TxVSN as one in which a student "is not required to be located on the physical premises" of the school.

Comment: RYHT expressed support for §70.1001(7) as proposed, disallowing virtual schools from serving students below Grade 3 where state assessments are not administered.

Agency Response: The agency agrees and maintains the language in §70.1001(7), adopted as §70.1001(8).

Comment: Two TxVSN online schools recommended adding the phrase "for the statewide catalog" to proposed §70.1001(9) because the functions listed relate to the statewide course catalog and not the TxVSN OLS program.

Agency Response: The agency agrees and has modified the language of §70.1001(9), adopted as §70.1001(10), to read as follows, "TxVSN receiver district--A Texas public school district or charter school that has students enrolled in the school district or charter school who take one or more online courses through the TxVSN statewide course catalog."

Comment: The TASB stated that §70.1001(10) as proposed defines the TxVSN statewide catalog as a program for students in Grades 8-12, which conflicts with proposed §70.1017(b)

and §70.1031(4)(D) that both refer to Grades 9-12 for TxVSN courses through the statewide course catalog. The commenter recommended clarifying under which circumstances a student in Grade 8 would be able to enroll.

Agency Response: The agency agrees that the language in §70.1001(10), adopted as §70.1001(11), was unclear and has modified the language to remove the phrase "for students in Grades 8-12."

Comment: Two TxVSN online schools stated that the rules should be clear and avoid subjective phrases. The commenters recommended deleting from §70.1003(b) the phrase "and ensure high-quality education."

Agency Response: The agency disagrees and has maintained the language in §70.1003(b) as published as proposed. The language in §70.1003(b) is consistent with statute, TEC, §30A.051(a)(2)(A).

Comment: Two TxVSN online schools recommended modifying §70.1003(b) to delete "For audit purposes, participants must maintain documentation to support the requirements of the TxVSN program and any agreements." The commenters stated that language is not needed regarding the audit as the audit can be required as part of the rules, which it is.

Agency Response: The agency disagrees and has maintained the language in §70.1003(b) as published as proposed for clarity.

Comment: The superintendent of Guthrie Common School District recommended removing the inclusion of the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines from §70.1005(a)(1)(F). The commenter stated that the Section 508 requirements are already onerous and expansive and that courses offered in the TxVSN will be well within the accessibility reach of any students who qualify and may wish to take the courses.

Agency Response: The agency agrees and has modified §70.1005(a)(1)(F) to read as follows, "meet accessibility requirements established by the U.S. Rehabilitation Act, §508, and the TxVSN accessibility guidelines."

Comment: Two TxVSN online schools recommended modifying §70.1005(a)(1)(F) to delete "TxVSN accessibility guidelines" because the U.S. Rehabilitation Act, §508, and the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines cover the special education accessibility requirements; therefore, the language is unnecessary.

Agency Response: The agency disagrees and has determined that the TxVSN accessibility guidelines are required to be addressed. In response to other comments, the agency modified §70.1005(a)(1)(F) to read as follows, "meet accessibility requirements established by the U.S. Rehabilitation Act, §508, and the TxVSN accessibility guidelines."

Comment: Responsive Education Solutions stated that, with the move into Java and other interactive methods used to enhance the student's experience, meeting the 100 percent Section 508-compliancy requirement in §70.1005(a)(1)(F) as proposed is very difficult to achieve for every course. The commenter stated that when a student needs specialized instruction, those needs are able to be addressed individually as required by law and asked that current technology be taken into account when addressing this issue in the rules.

Agency Response: The agency disagrees and has determined that the requirements of Section 508 are federally mandated. In response to other comments, the agency has modified §70.1005(a)(1)(F) to read as follows, "meet accessibility requirements established by the U.S. Rehabilitation Act, §508, and the TxVSN accessibility guidelines."

Comment: Two TxVSN online schools recommended modifying §70.1005(a)(1)(G) to add the phrase "is scheduled to" and to modify §70.1011(e)(6) to replace "ensures that" with "shall be registered to." The commenters stated that providers can ensure that students have the opportunity to take the applicable assessment, but cannot ensure that each student will actually take the assessment.

Agency Response: The agency disagrees and has maintained the language in §70.1005(a)(1)(G) and §70.1011(e)(6) as published as proposed. The language is consistent with statute, TEC, §30A.110(b).

Comment: RYHT expressed concern regarding §70.1005(a)(1)(G) and §70.1011(e)(6), which address student assessment and the requirement that each assessment be supervised by a proctor rather than a trained and certified testing coordinator as currently required for all districts and charters. The commenter recommended that the agency authorize a trusted organization to administer state assessments to students enrolled in full-time online schools with the same security provisions that currently exist for traditional districts and open-enrollment charter schools.

Agency Response: The agency disagrees and has maintained the language in §70.1005(a)(1)(G) and §70.1011(e)(6) as published as proposed. As adopted, the rules require TxVSN online schools to meet all of the laws and rules applicable to a traditional school, including the security and administration requirements for state assessments.

Comment: Two TxVSN online schools recommended modifying §70.1005(a)(2) to add the words "or interactive online" to hands-on laboratory investigations and field work. The commenters stated that students attending a fully virtual school should be able to take advantage of the high-quality and highly engaging science labs online that use appropriate scientific inquiry.

Agency Response: The agency disagrees and has maintained the language in §70.1005(a)(2) as published as proposed. The language is consistent with State Board of Education rule in 19 TAC Chapter 112, Subchapter C, relating to science.

Comment: Two TxVSN online schools recommended modifying §70.1005(a)(4) to add the language "to revise and submit the course for approval." The commenters stated that it is critical that courses are approved the year prior to implementation, and that the inclusion of new Texas Essential Knowledge and Skills (TEKS) would require an additional year of preparation to build, develop, and allow sufficient time to approve the course.

Agency Response: The agency disagrees and has maintained the language in §70.1005(a)(4) as published as proposed. The language is consistent with statute, TEC, §30A.104(b).

Comment: Two TxVSN online schools recommended adding a new §70.1005(a)(6) to read as follows, "Updated courses: Previously approved courses may be updated if the provider district annually certifies the course meets standards." The commenters stated that provider districts overseeing a TxVSN online school should have the authority to certify course updates and the addition would allow Texas students to receive the most up-to-date courses.

Agency Response: The agency disagrees and has determined that a TxVSN provider district is not required to submit for review courses that have undergone minor updates or revisions. Additionally, §70.1005(b) as adopted allows a school district or charter school to apply to the commissioner for a waiver of the course review requirement if the district or charter school certifies that the courses they offer meet all of the requirements in rule.

Comment: The superintendent of Guthrie Common School District recommended eliminating the waiver provision in §70.1005(b). The commenter stated that circumventing the usual and customary review process with a waiver request seems to place undue burden on the agency and that there is already in place a complete and thorough course vetting process with an appropriate appeal process in place.

Agency Response: The agency disagrees and has maintained the language as published as proposed. The waiver of course review requirements is one option available to school districts and charter schools that serve as TxVSN providers and does not place any additional burden on the agency. Additionally, this option provides flexibility and local control to school districts and charter schools that serve as TxVSN providers.

Comment: Responsive Education Solutions stated that as proposed the waiver process in §70.1005(b)(1) and (2) should be a standard operating procedure and not require a waiver. The commenter added that the course review process would be expected if the virtual school declines in academic rating, which would allow districts and charter schools to have the same process and procedure in place for both local and virtual campuses.

Agency Response: The agency disagrees and has maintained the language in §70.1005(b)(1) and (2) as published as proposed. The requirement that a course be reviewed is required in statute, TEC, §30A.105(a). TEC, §7.056, requires that a school campus or district must apply to the commissioner for a waiver of a statutory requirement.

Comment: Two TxVSN online schools stated that terms defined in the §70.1001 should be used throughout the rules to avoid confusion. The commenters recommended modifying §70.1005(b) to replace the term "a Texas public school district or charter school" with "a Texas provider district."

Agency Response: The agency disagrees and has maintained the language in §70.1005(b) as published as proposed. The commissioner does not have authority to waive statutory requirements for institutions of higher education or regional education service centers.

Comment: Two TxVSN online schools recommended modifying §70.1005(b) to add "the commissioner retains the right to revoke a waiver at any time based on student performance."

Agency Response: The agency disagrees and has maintained the language in §70.1005(b) as published as proposed. The agency has determined that the language as adopted provides TxVSN provider districts with clear criteria regarding the commissioner's ability to revoke a waiver of the course review requirements.

Comment: Two TxVSN online schools stated that the language in §70.1005(b)(1) and (2) is confusing and recommended deleting it.

Agency Response: The agency disagrees and has maintained the language in §70.1005(b)(1) and (2) as published as proposed. The agency has determined that the language is necessary in order to hold TxVSN provider districts accountable for ensuring that courses offered through the TxVSN meet the requirements in §70.1005(a).

Comment: A TxVSN statewide course catalog provider district inquired if, in §70.1005(b), only current TxVSN providers would be eligible for the waiver of course review requirements or if entities that have never served as providers would be eligible as well.

Agency Response: The agency provides the following clarification. As adopted, §70.1005(b) allows any school district or charter school to apply to the commissioner for a waiver of the course review requirements if the district or charter school certifies that the courses they offer meet all of the requirements in rule. The commissioner does not have authority to waive statutory requirements for institutions of higher education or regional education service centers.

Comment: The Texas Classroom Teachers Association (TCTA) expressed opposition to proposed §70.1005(b), which allows school districts and charter schools to seek a waiver of the course review requirements. The commenter stated that particularly for charter schools, a higher percentage of which have been low-performing and for whom a strong curriculum is particularly important, there should be this level of content oversight with no waivers.

Agency Response: The agency disagrees and has maintained the language in §70.1005(b) as published as proposed. The waiver of course review requirements is one option available to school districts and charter schools that serve as TxVSN providers and provides flexibility and local control to school districts and charter schools that serve as TxVSN providers.

Comment: The TCTA requested further clarification on §70.1005(a)(1)(C), specifically how a course will be measured to ensure it is "equivalent in instructional rigor and scope to a course" that is 90 instructional days and meets the minimum length of a school day.

Agency Response: The agency provides the following clarification. The measure of the instructional rigor and scope of a course taught through the TxVSN is based on whether all of the TEKS for the course are addressed.

Comment: Responsive Education Solutions asked for clarification regarding whether §70.1007(a)(2) as proposed would apply to course catalog providers only and §70.1009 as proposed would apply to TxVSN online school providers.

Agency Response: In response to this and other comments, the agency has modified the language of §70.1007(a) to clarify that the eligibility criteria in that paragraph only apply to TxVSN statewide course catalog providers. Section 70.1009 addresses the eligibility criteria for TxVSN online schools.

Comment: Responsive Education Solutions asked that the use of "acceptance" in §70.1007(b)(2) as proposed be defined. The commenter stated that the definition is important because of the previous public school enrollment requirement and the number of steps it takes for virtual schools to ensure that a student is eligible to enroll.

Agency Response: The agency agrees and has modified §70.1007(b)(2) to change "acceptance" to "enrollment" for clarification.

Comment: The director of continuing education at The University of Texas of the Permian Basin expressed concern with the maximum class size limit as proposed in §70.1007(b)(5). The commenter recommended that English courses keep a smaller cap since much of the scope and sequence of the syllabi requires subjective grading by way of the many essay writing projects required.

Agency Response: The agency disagrees and has maintained the language in §70.1007(b)(5) as published as proposed. TxVSN providers may impose stricter class size limits than those required by rule.

Comment: Two TxVSN online schools recommended deleting §70.1007(b)(5) and §70.1011(e)(12). The commenters stated that the provisions for a ratio takes away needed flexibility and is unnecessary because a school that has too many students will not have successful course completion and the state accountability metrics will be the consequence.

Agency Response: The agency disagrees and has maintained the language in §70.1007(b)(5) and §70.1011(e)(12) as published as proposed. The agency has determined that the rules provide sufficient flexibility to TxVSN provider districts and ensure a quality educational environment. Additionally, TEC, §25.112, addresses class size limits for Grades 3 and 4.

Comment: RYHT expressed concern that the proposed rules do not limit the expansion of grades served and students enrolled to online schools where academic and financial accountability standards are consistently met.

Agency Response: The agency disagrees and has maintained the language as published as proposed. In order to align with traditional school processes and maintain local control, the TEA has not limited the expansion of grades served or number of students enrolled at TxVSN online schools. Like traditional schools, the TxVSN online schools must meet the standard academic and financial accountability standards.

Comment: RYHT expressed concern that there are no specific provisions in the proposed rules that require that timely information regarding the location, provider, enrollment area, grades served, number of students served, costs, and performance outcomes of the full-time online schools be provided to the public.

Agency Response: The agency disagrees. In order to align with traditional school processes and maintain local control, the TEA has not required this information be posted on TxVSN online school websites. Much of the information cited by the commenter is readily available on the individual school's website or the TEA website.

Comment: RYHT expressed support for the proposed rules in §70.1009 and §70.1023, which maintain current reporting and accountability requirements for virtual schools as are required for all other public schools in Texas and §70.1017(b), which maintains existing requirements for the successful completion of online courses in order to award full funding for virtual education.

Agency Response: The agency agrees and maintains the language as published as proposed. In response to other comments, the agency has made other modifications to §70.1023 to clarify that accountability requirements apply to both the TxVSN online school program and the TxVSN statewide course catalog.

Comment: Two TxVSN online schools recommended adding "Provider District" to the title of §70.1009 to read as follows, "Texas Virtual School Network Online School Provider District Eligibility." The commenters stated that the section should be for provider districts to be eligible to initially authorize a TxVSN online school. The commenters also suggested modifying §70.1009(a) to include the following phrase, "to be eligible to initially authorize a TxVSN online school, a TxVSN provider district shall" in order to be consistent with the recommendation to revise the title of §70.1009.

Agency Response: The agency disagrees and has maintained the language in §70.1009 as published as proposed. The language as adopted is sufficiently clear and applies only to TxVSN online schools and not to TxVSN statewide course catalog providers.

Comment: Two TxVSN online schools recommended deleting §70.1009(b) in its entirety. The commenters stated that the timeline is unrealistic and the commissioner has other authority to revoke the school in the event of noncompliance.

Agency Response: The agency disagrees and has maintained the language in §70.1009(b) as published as proposed. The rule as adopted ensures the quality and accountability of TxVSN online schools.

Comment: The TCTA recommended that §70.1009(b) should read that TEA "shall suspend a TxVSN Online School (OLS) program that no longer meets the requirements of subsection (a) of this section." The commenter stated that, with the exception of requiring acceptable performance, §70.1009 sets low bars to be cleared and are primarily process-based. The commenter further stated that there should be an assumption that these programs would be suspended if the school fails to meet these standards.

Agency Response: The agency disagrees and has maintained §70.1009(b) as published as proposed. Section 70.1029 adequately addresses factors which may lead to the revocation of the right to participate as a TxVSN provider district.

Comment: RYHT expressed concern that proposed §70.1011(b) only requires notification to the agency for a district or charter school to open operation of a full-time online school. The commenter suggested that the previous application and approval process be reinstated and that the process ensure that a district or open-enrollment charter school proposing to operate an online school meets the accountability and fiscal standards stated in the proposed rules. The commenter also recommended that this process include a review of the contract between the district or charter school and the private provider.

Agency Response: The agency disagrees and has maintained the language in §70.1011(b) as published as proposed. In order to align with traditional school processes and maintain local control, the TEA will not have an application and approval process for schools wishing to operate a full-time TxVSN online school.

Comment: One TxVSN provider district and one community member expressed concern regarding the lack of quality control in §70.1011(b) as proposed, which allows any district or charter school to simply notify the TEA of their intention to serve students in full-time virtual instruction without clarifying standards.

Agency Response: The agency disagrees and has maintained the language in §70.1011(b) as published as proposed. As adopted, the rules allow the commissioner of education to

revoke the right of participation in the TxVSN based on noncompliance with state or federal laws or poor student performance.

Comment: Responsive Education Solutions expressed support for §70.1011(b) as proposed and agreement with the change in terms of participation.

Agency Response: The agency agrees and has maintained the language in §70.1011(b) as published as proposed.

Comment: Two TxVSN online schools recommended revising §70.1011(b) to read as follows, "a TxVSN online school shall, at least six months prior to the start of each academic year, receive approval of grade levels to be served and the total number of students to be served during that academic year from the TxVSN provider district. A TxVSN online school may not add grade levels after the start of the school year. The TxVSN provider district shall notify the TEA of the TxVSN online school's grade levels to be served and the total number of students to be served during that academic year." The commenters stated that the TxVSN provider district should be the entity to approve enrollment and notify the agency.

Agency Response: The agency disagrees and has maintained the language in §70.1011(b) as published as proposed. The rule as adopted requires only notification to the agency and not approval. Additionally, the TxVSN online school and the TxVSN provider district are the same entity.

Comment: Two TxVSN online schools recommended revising §70.1011(c) and (d) to replace "online school or a school district or charter school wishing to begin operating a TxVSN online school" with "TxVSN Provider District." The commenters stated that terms should be consistent and used throughout the proposed rules for clarity.

Agency Response: The agency disagrees and has maintained the language in §70.1011(c) and (d) as published as proposed. The TxVSN online school and the TxVSN provider district are the same entity. Additionally, the language "a school district or charter school wishing to begin operating a TxVSN online school" is necessary in order to include school districts or charter schools that are not yet operating as TxVSN online schools.

Comment: Two TxVSN online schools recommended deleting §70.1011(e)(1) as TxVSN online schools are different from in-person schools and many regulations simply do not apply. The commenters added that if it cannot be deleted then specific statute should be referenced that a TxVSN online school needs to follow.

Agency Response: The agency disagrees and has maintained §70.1011(e)(1) as published as proposed. In order to align with traditional schools, TxVSN online schools are required to comply with all the same laws and rules except as stated otherwise in these rules.

Comment: Two TxVSN online schools recommended revising §70.1011(e)(8) to replace "make these records available to the TEA, upon request in the requested electronic format" with "make these records available to the TEA, upon request in the mutually agreeable electronic format." The commenters stated that this revision ensures the rule is flexible enough for the required documentation to change over time.

Agency Response: The agency disagrees and has maintained the language in §70.1011(e)(8) as published as proposed. The agency has determined that the language is sufficiently flexible to support change over time.

Comment: A TxVSN statewide course catalog provider district stated that §70.1011(e)(12) as proposed clarifies that the maximum class size for any section of online students in Grades 5-12 is 40; however, there is no clarification as to how many sections may be offered. The commenter recommended including definite guidelines for the number of sections allowed to ensure the quality of online learning.

Agency Response: The agency disagrees and has maintained the language in §70.1011(e)(12) as published as proposed. In order to align with traditional school processes and maintain local control, the TEA has not established a maximum number of sections a TxVSN provider may offer.

Comment: Two TxVSN online schools recommended clarifying the language in §70.1011(e)(13)(A) to read "all required fiscal documentation." The commenters stated that the TxVSN already carries heavy documentation burdens and only statutorily prescribed documentation should be required through these rules.

Agency Response: The agency agrees that the language regarding fiscal documentation was vague. The agency has modified §70.1011(e)(13)(A) to read as follows, "the same financial documentation that is required of a traditional campus and documentation sufficient to demonstrate successful course completion."

Comment: Two TxVSN online schools stated that the word "detailed" is subjective and recommended deleting the word from §70.1011(e)(13)(B) and (C).

Agency Response: The agency disagrees and has maintained the language in §70.1011(e)(13)(B) and (C). The rule as adopted ensures that sufficient documentation is maintained by the TxVSN online school in order to document compliance with law and rule.

Comment: Two TxVSN online schools recommended revising §70.1011(e)(14) to read as follows, "require contractors to comply with the record retention requirements for federal and state programs as mandated by the Texas State Library and Archives Commission." The commenters stated that the change is needed to clearly define what is required by the rules.

Agency Response: The agency disagrees and has maintained the language in §70.1011(e)(14) as published as proposed. The rule as adopted ensures that sufficient documentation is maintained by the TxVSN online school in order to document compliance with law and rule.

Comment: Two TxVSN online schools stated that consistent terms should be used throughout the rules for clarity and recommended replacing "school districts and charter schools serving as TxVSN online schools" with "TxVSN online school" in §70.1011(f) and (g).

Agency Response: The agency agrees and has modified the language in §70.1011(f) and (g) to delete the words "School districts and charter schools serving as."

Comment: Two TxVSN online schools recommended revising §70.1011(f)(3) and §70.1011(g)(3)(C) to change "reimburse" to "subsidize or reimburse." The commenters stated that the proposed revision is needed to be consistent with current practice.

Agency Response: The agency agrees and has modified §70.1011(f)(3) to replace the word "reimburse" with "subsidize or reimburse." Additionally, the agency modified §70.1011(g)(3)(C) to replace the word "reimbursement" with "subsidy or reimbursement."

Comment: A parent inquired about the minimum number of courses in which a student must enroll and receive instruction through a Texas public school, including online programs offered by Texas Tech University or The University of Texas at Austin, in order to meet the full-time eligibility requirement proposed in §70.1013.

Agency Response: The agency provides the following clarification. The minimum number of courses in which a student must enroll in a public school in order to be eligible for full-time enrollment in the TxVSN would be determined by the enrolling school. In response to other comments, the agency has modified §70.1013(b)(1) to read, "the student was enrolled in a public school in this state in the preceding school year," in alignment with statute.

Comment: RYHT recommended that student enrollment eligibility requirements be maintained as proposed in §70.1013(b) and that public funds not be diverted to virtual education for access by private and home-schooled students.

Agency Response: The agency disagrees that the student enrollment requirements be maintained as published as proposed. The agency has determined that the rule must align with statute, TEC, §30A.002(b)(1). The agency has modified §70.1013(b)(1) to read as follows, "the student was enrolled in a public school in this state in the preceding school year."

Comment: Responsive Education Solutions asked that the term "grading period" in §70.1013(b) as proposed be defined because it is unclear if the term refers to the grading period time frame of the TxVSN online school or of the sending school.

Agency Response: The agency provides the following clarification. To align the rule with statute, TEC, §30A.002(b)(1), the agency has modified §70.1013(b)(1) to remove the language referring to one full grading period.

Comment: Responsive Education Solutions stated that §70.1013(b) as proposed is stricter than the Texas Education Code and recommended revising the requirement to only require enrollment, not a certain period of time for enrollment, as it is onerous on the receiving school to collect information in a timely fashion.

Agency Response: The agency agrees and has determined that the rule must align with statute, TEC, §30A.002(b)(1). The agency has modified §70.1013(b)(1) to read as follows, "the student was enrolled in a public school in this state in the preceding school year."

Comment: Two TxVSN online schools recommended deleting §70.1013(b)(1). The commenters stated that the requirements for student eligibility under §70.1013(a) should be the only requirements for eligibility. The commenters added that if §70.1013(b)(1) is not deleted it should be revised to read "student meets the requirements in (a)."

Agency Response: The agency disagrees. The requirement that a student is eligible to enroll full time in courses offered through the TxVSN only if the student was enrolled in a public school in the preceding school year is required in statute, TEC, §30A.002(b)(1). In response to other comments, the agency has modified §70.1013(b)(1) to read as follows," the student was enrolled in a public school in this state in the preceding school year."

Comment: The TCTA recommended that in §70.1013(b)(1) the term "one full grading period" should be clarified to be enrolled in a full semester the previous school year and that a summer session not be adequate to meet this standard.

Agency Response: The agency disagrees with the recommendation to require enrollment for a full semester during the previous school year. In response to other comments and to align with statute, TEC, §30A.002(b)(1), the agency has modified §70.1013(b)(1) to remove the requirement that a student be enrolled for at least one full grading period in the preceding school year.

Comment: Two TxVSN online schools stated that the language in §70.1013(b)(3)(B) is unnecessary for students enrolling in the TxVSN OLS program as they could have been previously enrolled in Grades 3-8. The commenters recommended deleting the language in its entirety.

Agency Response: The agency disagrees and has maintained §70.1013(b)(3)(B) as published as proposed. The language in this rule is consistent with statute, TEC, §30A.002(c)(2).

Comment: A parent stated that the student eligibility requirement for the TxVSN OLS program creates an unfair barrier for students who have been home schooled or who have been unable to attend public school due to health problems. The parent recommended adding §70.1013(b)(4)(A) to read as follows, "the student was enrolled in TxVSN in a prior school year" and §70.1013(b)(4)(B) to read as follows, "the student is unable to attend traditional school due to a special circumstance (e.g., medical or other family circumstance which parents determine TxVSN is the best education setting for a Texas Student Resident)."

Agency Response: The agency disagrees with the suggested language and has determined that the requirement that a student is eligible to enroll full time in courses provided through the state virtual school network only if the student was enrolled in a public school in this state in the preceding school year is required by statute, TEC, §30A.002(b)(1). In response to other comments, the agency has modified §70.1013(b)(1) to read as follows, "the student was enrolled in a public school in this state in the preceding school year."

Comment: Responsive Education Solutions stated that it is problematic to confirm and document in a timely manner the requirement that a student has been enrolled in a Texas public school the previous year, what high school course(s) have been completed by the student, and which special education designations apply to the student. The commenter recommended an enrollment form and process that would allow provisional enrollment for the student with final enrollment contingent upon the parent or guardian submitting the necessary documents that confirm the required enrollment information within a certain number of days.

Agency Response: The agency agrees and added new §70.1013(c) to read as follows, "If a student has not provided required evidence of eligibility to enroll, a TxVSN online school may: (1) enroll a student provisionally for ten school days; and (2) withdraw the student from the online school if the student does not provide the required evidence of eligibility within ten school days of the provisional enrollment." The agency has also added new §70.1013(d) to read as follows, "Upon enrolling a student provisionally, the TxVSN online school shall notify the student and the student's parents or guardians that the student will be withdrawn if documentation is not provided within the required timeframe."

Comment: Two TxVSN online schools recommended modifying §70.1015(a)(1) and (2) to add "or OLS" to include both part-time and full-time programs.

Agency Response: The agency disagrees and has maintained the language in §70.1015(a)(1) and (2) as published as proposed. The language in §70.1015(a) sufficiently addresses both the TxVSN statewide course catalog and the TxVSN OLS program.

Comment: The TASB stated that §70.1015(b)(4) as proposed requires that the grade assigned by the TxVSN teacher be added to the student's transcript by the student's home district, which could allow a TxVSN teacher to assign a student's final grade without considering the state's requirement that an end-of-course exam account for 15% of a student's final course grade. This is significant because a district's grading policy could calculate final course grades in a different manner than a TxVSN teacher. The commenter recommended clarifying that the home district will include on the student's transcript a grade that reflects the grade assigned by the TxVSN teacher and, when applicable, the EOC assessment.

Agency Response: The agency disagrees and has maintained the language in §70.1015(b)(4) as published as proposed. For courses taken through the TxVSN statewide course catalog, the TxVSN receiver district is responsible for calculating the EOC score into the course grade according to local policy. For courses taken through the TxVSN OLS program, the online school is responsible for calculating the EOC score into the course grade.

Comment: Responsive Education Solutions stated that, while in support of the pay for performance model in §70.1017 as proposed, it is unclear how weighted funding, especially federal funds such as special education dollars, can flow through the pay for performance model and still follow the federal guidelines that do not flow through pay for performance. The commenter asked for an explanation of the funding structure or a redefinition of the flow of federal weighted funds.

Agency Response: The agency provides the following clarification. The term "weighted funding" in §70.1017 refers to state funds, not federal funds. Federal weighted funding flows to the local school district or charter that operates the TxVSN online school and not to the TxVSN online school itself.

Comment: Two TxVSN online schools recommended revising §70.1017(b) to change "any weighted funding" to "the full weighted funding." The commenters also recommended adding the following sentence, "For federal program purposes only, a TxVSN OLS will be considered an LEA and be eligible to receive funding for the student it enrolls." The commenters stated that the recommended revisions will allow federal dollars intended for enrolled students, such as Title I and IDEA-B, to flow to the TxVSN OLS.

Agency Response: The agency disagrees and has maintained the language in §70.1017(b) as published as proposed. The term "weighted funding" in §70.1017 refers to state funds, not federal funds. Federal weighted funding flows to the local school district or charter that operates the TxVSN online school and not to the TxVSN online school itself.

Comment: RYHT stated that §70.1019 seems to allow institutions of higher learning to operate full-time TxVSN online schools. The commenter expressed concern that there may be issues with how these institutions comply with the reporting and accountability requirements and evaluations required for traditional districts and open-enrollment charters.

Agency Response: As adopted, the rules allow an institution of higher education to serve as a TxVSN provider district; however, §70.1009 requires that to be eligible to serve as a TxVSN online school, a school district or charter school must meet certain criteria related to accountability, accreditation, and other statutory requirements that do not apply to an institution of higher education. In response to this and other comments, the agency has modified the language of §70.1007 to clarify that the eligibility criteria only apply to TxVSN statewide course catalog providers.

Comment: RYHT expressed support for §70.1021 as proposed, which would prevent private virtual providers from issuing high school diplomas. The commenter stated that the host district or charter school should issue the high school diploma to students who have met all state requirements for graduation.

Agency Response: The agency agrees and maintains the language as published as proposed.

Comment: Two TxVSN online schools recommended modifying §70.1023(b) to specify "school districts and charter schools participating in the TxVSN Online school (OLS) program" for clarity.

Agency Response: The agency agrees and has modified §70.1023(b) to read as follows, "All school districts and charter schools participating in the TxVSN Online School (OLS) program are included in the state's academic accountability system."

Comment: Two TxVSN online schools recommended replacing the language "a school district or charter school" in §70.1025(a) with "a TxVSN provider district" for clarity.

Agency Response: The agency disagrees and has determined that the language of §70.1025(a) is consistent with that in statute, TEC, §30A.155(a). In response to other comments, the agency has modified §70.1025 to reorganize the language for clarity and to distinguish between course cost and fees.

Comment: The TASB stated that §70.1025(a)-(c) is unclear. The commenter recommended that the agency define "fee" and "nominal fee" either in §70.1001 or §70.1025 and clarify whether, under §70.1025(a), a district may charge a student a "nominal fee" in addition to the "fee." The commenter stated that the TxVSN web site refers to the "fee" (the cost of providing the course, or $400, whichever is less) as the "course cost" for clarity.

Agency Response: The agency agrees and has modified §70.1025 to reorganize the language for clarity and to distinguish between course cost and fees.

Comment: Two TxVSN online schools recommended adding the language "For students enrolled part-time," to §70.1025(c). The commenters stated that "with the addition of the section on funding for full-time students, this language pertains only to students who are taking courses part-time that do not have other school services attached to it such as administrators, state testing or guidance counselors."

Agency Response: The agency disagrees and has determined that the section title of §70.1025 provides sufficient clarity regarding fees that may be charged. The rules regarding funding for students in the TxVSN OLS program are addressed in the *Student Attendance Accounting Handbook*. In response to other comments, the agency has modified §70.1025 to reorganize the

language for clarity and to distinguish between course cost and fees.

Comment: Two TxVSN online schools recommended deleting the language "the lesser of the cost of providing the course or" from §70.1025(c)(2). The commenters stated that as proposed, the requirement would be hard to determine except by an audit or "agreed upon procedures" conducted by an independent third party, and could vary each month.

Agency Response: The agency disagrees and has maintained the language of §70.1025(c)(2), adopted as §70.1025(a). The rule is consistent with that in statute, TEC, §30A.155(c).

Comment: The Center for Distance Education at The University of Texas at Arlington expressed concern regarding §70.1027 as proposed. The commenter stated that the rule will introduce standards not widely known or used in higher education and does not respect the professional development and extensive online teaching experience of the higher education faculty and distance education staff who offer the online courses under TxVSN in adherence with postsecondary and national education standards.

Agency Response: The agency disagrees and has maintained the language in §70.1027 as published as proposed. The agency determined that the professional development requirements are not inconsistent with higher education professional development requirements or postsecondary and national education standards. The rules as adopted require TxVSN teachers to meet one of the following three criteria: (1) successfully complete a professional development course or program approved by TxVSN central operations, (2) have a graduate degree in online or distance learning and have demonstrated mastery of the International Association for K-12 Learning (iNACOL) National Standards for Quality Online Teaching, or (3) have documented experience of two or more years teaching online courses for students in Grades 3-12 and mastery of the (iNACOL) National Standards for Quality Online Teaching. Additionally, TxVSN teachers must complete one professional development course specific to online learning every three years. The training to satisfy this requirement is determined locally. In response to other comments, the agency has modified §70.1027(a)(1)(A) to clarify that a teacher must meet one of the three criteria in §70.1027(a)(1)(A)-(C).

Comment: One TxVSN statewide course catalog provider and one TxVSN online school recommended the addition of the word "or" at the end of §70.1027(a)(1)(A) to clarify that only one of the requirements for educators of electronic courses in §70.1027(a)(1)(A)-(C) must be met.

Agency Response: The agency agrees and has modified §70.1027(a)(1)(A) to clarify that a teacher must meet one of the following three criteria: successful completion of a professional development course approved by TxVSN central operations, or of a graduate degree in online or distance learning and mastery of the (iNACOL) National Standards for Quality Online Teaching, or documented experience of two or more years teaching online courses for students in Grades 3-12 and mastery of the (iNACOL) National Standards for Quality Online Teaching.

Comment: Three TxVSN online schools recommended that §70.1027(a)(1)(A) be revised to allow teachers to begin teaching prior to the completion of the professional development course as was previously allowed. The commenter recommended the completion of the professional development in the first semester or year that the teacher is employed, but stated that the recommendation would enable districts to fill openings as needed and in the event that they become available after the start of the school year.

Agency Response: The agency disagrees and has maintained the language in §70.1027(a)(1)(A) requiring a teacher of an electronic course through the TxVSN to successfully complete the professional development course prior to teaching the electronic course. This requirement is mandated by statute, TEC §30A.111(a)(2). In response to other comments, the agency has modified §70.1027(a)(1)(A) to clarify that a teacher must meet one of the three criteria in §70.1027(a)(1)(A)-(C).

Comment: Responsive Education Solutions expressed support for the flexibility provided in §70.1027(a)(2) for districts to find the most appropriate and relevant training to meet the needs of its virtual teachers.

Agency Response: The agency agrees and has maintained the language in §70.1027(a)(2) as published as proposed.

Comment: Two TxVSN online schools recommended changing §70.1027(a)(2) to read as follows, "must complete at least 20 hours of professional development specific to online learning annually." The commenters stated that the recommended language is a higher requirement than the requirement of the rule as proposed.

Agency Response: The agency disagrees and has maintained §70.1027(a)(2) as published as proposed. A local district or charter school may implement requirements stricter than those in rule.

Comment: Two TxVSN online schools recommended combining §70.1027(d)(1)(A) and (B) to read as follows, "by the end of the first year of teaching, successful initial completion of TxVSN-approved professional development that meets the iNACOL National Standards for Quality Online Teaching, evidence of prior online teaching, or a graduate degree in online or distance learning...." The commenters stated that the recommendation reflects the language TEA previously provided for TxVSN OLS.

Agency Response: The agency disagrees and has maintained §70.1027(d)(1)(A) and (B) as published as proposed. As adopted, this rule requires districts to maintain records documenting completion of professional development requirements. The suggested language does not substantively alter the requirement.

Comment: Two TxVSN online schools recommended revising §70.1029 to read as follows, "the commissioner of education may revoke the right to participation in the Texas Virtual School Network (TxVSN) based on any of the following factors after providing a reasonable period to cure any documented noncompliance." The commenters stated that it is important to give a full-time school time to solve participation and performance standards problems before revocation of their right to participate in the TxVSN.

Agency Response: The agency disagrees and has maintained the language in §70.1029 as published as proposed. The agency has determined that the rules are necessary to address low performance and to maintain a quality educational environment.

Comment: Texas Senator Van de Putte stated that §70.1029 permits the commissioner of education to revoke the right to participation in the TxVSN based on consistently poor student performance rates and campus accountability ratings. The senator

asked what would happen if the campus has horrible student performance on assessments, which presumably results in poor campus accountability ratings, but also has acceptable "completion" or "successful completion" rates. The senator stated that the use of the word "and" in §70.1029(3) indicates that the commissioner of education would not have authority to revoke participation under this scenario.

Agency Response: The agency agrees that the word "and" implies a different meaning from that which was intended and has modified §70.1029(3) to read as follows, "consistently poor student performance rates as evidenced by results on statewide student assessments, student withdrawal rates, student completion rates, successful completion rates, or campus accountability ratings."

Comment: Two TxVSN online schools recommended deleting §70.1029(3). The commenters stated that the requirement is already built into accountability ratings, which lead up to a school's closure.

Agency Response: The agency disagrees and has determined that the language is necessary to provide clarification regarding conditions under which the right to participate in the TxVSN can be revoked. In response to other comments, the agency has modified §70.1029(3) to read as follows, "consistently poor student performance rates as evidenced by results on statewide student assessments, student withdrawal rates, student completion rates, successful completion rates, or campus accountability ratings."

Comment: Two TxVSN online schools recommended deleting §70.1031(4)(B) and (D). The commenters stated that PEIMS is used between districts and the TEA; therefore, it is not necessary to identify this information on a public website that parents and students use. The commenters added that §70.1031(4)(D) requires providing an immense amount of information, which would undermine the effectiveness of disclosure.

Agency Response: The agency disagrees and has maintained §70.1031(4)(B) and (D) as published as proposed. The agency has determined that in order to maintain standard course references across schools it is important to identify PEIMS course titles and numbers. The agency further determined that a course syllabus or a course overview is important information for parents to have in order to make informed choices.

Comment: The TASB stated that §70.1035(e)(3) as proposed requires that a school district or charter school immediately enroll a student in an electronic course if the commissioner determines that a student was unreasonably denied the opportunity to enroll in the course, but does not consider that the providing entity may no longer allow enrollment in the course if the enrollment window has passed. The commenter recommended adding the language "or a similar course in accordance with the enrollment windows established by the provider."

Agency Response: The agency agrees and has modified §70.1035(e)(3) to read as follows, "If the commissioner determines that a student was unreasonably denied the opportunity to enroll in an electronic course, the school district or charter school shall immediately enroll the student in the electronic course or a similar course in accordance with the enrollment windows established by the provider."

The new sections are adopted under the TEC, §30A.051(b), which authorizes the commissioner of education to adopt rules necessary to implement the TEC, Chapter 30A, State Virtual School Network.

The new sections implement the TEC, §30A.051(b).

§70.1001. Definitions.

The following terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Electronic course--An educational course in which instruction and content are delivered primarily over the Internet, a student and teacher are in different locations for a majority of the student's instructional period, most instructional activities take place in an online environment, the online instructional activities are integral to the academic program, extensive communication between a student and a teacher and among students is emphasized, and a student is not required to be located on the physical premises of a school district or charter school. An electronic course is the equivalent of what would typically be taught in one semester. For example: English IA is treated as a single electronic course and English IB is treated as a single electronic course.

(2) Successful course completion--The term that applies when a student taking a high school course has demonstrated academic proficiency of the content for a high school course and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s), sufficient to earn credit for the course.

(3) Successful program completion--The term that applies when a student in Grades 3-8 has demonstrated academic proficiency and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s) for the educational program, sufficient for promotion to the next grade level.

(4) Texas Virtual School Network (TxVSN)--A state-led initiative for online learning rather than a telecommunications or information services network. The TxVSN is comprised of two components, the statewide course catalog and the online school program. Authorized by the Texas Education Code, Chapter 30A, the TxVSN is a partnership network administered by the Texas Education Agency (TEA) in coordination with regional education service centers (ESCs), Texas public school districts and charter schools, and institutions of higher education.

(5) TxVSN central operations--The regional education service center that carries out the day-to-day operations of the TxVSN, including the centralized student registration system, statewide course catalog listings, and other administrative and reporting functions.

(6) TxVSN online school--A Texas public school district or charter school that meets eligibility requirements and serves students who are enrolled full time in an approved TxVSN Online School program.

(7) TxVSN Online School (OLS) program--A full-time, virtual instructional program that is made available through an approved provider district and is designed to serve students in Grades 3-12 who are not physically present at school.

(8) TxVSN provider district--An entity that meets eligibility requirements and provides an electronic course through the TxVSN. Provider districts include providers in the statewide course catalog and TxVSN online schools.

(9) TxVSN receiver district--A Texas public school district or charter school that has students enrolled in the school district or charter school who take one or more online courses through the TxVSN statewide course catalog.

(10) TxVSN statewide course catalog--A supplemental online high school instructional program available through approved providers.

§70.1005. Texas Virtual School Network Course Requirements.

(a) All electronic courses to be made available through the Texas Virtual School Network (TxVSN) shall be reviewed and approved prior to being offered.

(1) Each electronic course approved for inclusion in the TxVSN shall:

(A) be in a specific subject that is part of the required curriculum;

(B) be aligned with the Texas Essential Knowledge and Skills (TEKS) approved for implementation in a given school year for a grade level at or above Grade 3;

(C) be the equivalent in instructional rigor and scope to a course that is provided in a traditional classroom setting during:

(i) a semester of 90 instructional days; and

(ii) a school day that meets the minimum length of a school day;

(D) be led by a qualified teacher and designed specifically for an online learning environment, including instructional tools, assessment features, and collaborative communication tools as appropriate;

(E) be aligned with the current International Association for K-12 Learning (iNACOL) National Standards for Quality Online Courses;

(F) meet accessibility requirements established by the U.S. Rehabilitation Act, §508, and TxVSN accessibility guidelines; and

(G) ensure that each student enrolled in a TxVSN electronic course takes any applicable assessment instrument required under the Texas Education Code, §39.023, according to the standard administration schedule and that each assessment is supervised by a proctor.

(2) Secondary (Grades 6-12) science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry as required by §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum).

(3) An Advanced Placement (AP) course must have documented approval from the College Board as an AP course prior to submission for TxVSN course review.

(4) If the TEKS with which an approved course is aligned are modified, the provider district or school shall be provided the same time period to revise the course to achieve alignment with the modified TEKS as is provided for the modification of a course provided in a traditional classroom setting.

(5) An online dual credit course to be offered as part of the TxVSN shall be submitted for review and approval prior to being offered.

(6) If the administering authority does not approve an electronic course, a provider district or school may appeal to the commissioner of education.

(A) A TxVSN provider must obtain support from the local governing board in order to appeal to the commissioner regarding the administering authority's refusal to approve an electronic course.

(B) If the commissioner determines that the administering authority's evaluation did not follow the criteria or was otherwise irregular, the commissioner may overrule the administering authority and place the course in the TxVSN course catalog.

(C) The commissioner's decision under this section is final and may not be appealed.

(b) A Texas public school district or charter school may apply to the commissioner for a waiver of the course review requirement if the school district or charter school certifies that courses they will offer meet all of the requirements of subsection (a)(1) of this section.

(1) A school district or charter school that receives a waiver of this requirement shall ensure that students enrolled in online courses that have not gone through the course review process perform at a rate at least equal to that of the district or charter as a whole.

(2) A school district or charter school that does not maintain student performance at least equal to that of the district or charter as a whole may be required to submit courses for review as a condition of continued participation in the TxVSN.

§70.1007. Texas Virtual School Network Provider District Eligibility and Program Requirements.

(a) The following entities are eligible to serve as Texas Virtual School Network (TxVSN) statewide course catalog provider districts:

(1) a Texas school district that is rated acceptable as described in the Texas Education Code (TEC), §39.054. A Texas school district may provide an electronic course through the TxVSN to:

(A) students enrolled in that district or school; or

(B) students enrolled in another school district or school in the state;

(2) a charter school that is rated recognized or higher as described in the TEC, §39.202, except that a campus may act as a provider district to students receiving educational services under the supervision of a juvenile probation department, the Texas Juvenile Justice Department, or the Texas Department of Criminal Justice if the campus is rated acceptable under the TEC, §39.054. A charter school may provide an electronic course through the TxVSN to:

(A) students within the school district in which the campus is located or within its service area, whichever is smaller;

(B) students enrolled in another school district or school in the state through an agreement with the school district in which the student resides; or

(C) students enrolled in another school district or school in the state if the student receives educational services under the supervision of a juvenile probation department, the Texas Juvenile Justice Department, or the Texas Department of Criminal Justice through an agreement with the applicable agency;

(3) a Texas public or private institution of higher education that provides a course through the TxVSN statewide course catalog; and

(4) an education service center that adheres to the general provisions of the TEC, Chapter 8, and that provides a course through the TxVSN statewide course catalog.

(b) TxVSN provider districts shall:

(1) notify parents and students of the option to enroll in the TxVSN online school at the time and in the manner that the school district or charter school informs students and parents about instructional

programs or courses offered in the district's or school's traditional classroom setting;

(2) notify students in writing upon enrollment to participate in the TxVSN online school with specific dates and details regarding enrollment;

(3) meet all federal and state requirements for educating students with disabilities;

(4) provide a contingency plan for the continuation of instructional services to all TxVSN Online School (OLS) program students allowing them to complete their TxVSN OLS program subject areas or courses in the event that the contract or agreement through which the TxVSN OLS program instructional services are provided is terminated or a TxVSN OLS program subject area or course becomes unavailable to the student; and

(5) ensure a maximum class size limit of 40 students in a single section of a course and ensure that the class size does not exceed the maximum allowed by law and a charter school's charter, as applicable, whichever is less.

§70.1011. Texas Virtual School Network Online School Program Requirements.

(a) A Texas Virtual School Network (TxVSN) online school may serve students in Grades 3-12, but may not serve students in Kindergarten-Grade 2.

(b) A school district or charter school wishing to operate a TxVSN online school in order to serve students in full-time virtual instruction shall, prior to the start of each academic year, notify the Texas Education Agency (TEA) of grade levels to be served and the total number of students to be served during that academic year. A school district or charter school may not add grade levels after the start of the school year.

(c) A TxVSN online school or a school district or charter school wishing to begin operating a TxVSN online school shall certify that the online school has courses sufficient to comprise a full instructional program for each grade level served by the online school prior to serving that grade level.

(d) School districts or charter schools approved to serve as TxVSN online schools shall follow the TEA procedures related to obtaining a campus number for the virtual campus through which they serve their TxVSN online school students.

(e) School districts and charter schools serving as TxVSN online schools shall:

(1) follow the same laws and rules that apply to traditional schools unless otherwise indicated in this chapter;

(2) verify the identity and eligibility of each student seeking to enroll full time in TxVSN online courses;

(3) notify parents and students of the option to enroll in the TxVSN online school at the time and in the manner that the school district or charter school informs students and parents about instructional programs or courses offered in the district's or school's traditional classroom setting;

(4) notify students in writing upon acceptance to participate in the TxVSN online school with specific dates and details regarding enrollment;

(5) document actual dates each student begins and ends enrollment in student data records for local recordkeeping purposes and for state funding reporting purposes;

(6) ensure that each student enrolled in the TxVSN online school takes any applicable assessment instrument required under the Texas Education Code, §39.023, according to the standard administration schedule and that each assessment is supervised by a proctor;

(7) allow access to proctored test administrations by any personnel or agent of the TEA;

(8) adopt an instructional calendar for the TxVSN online school and keep an instructional calendar for each TxVSN online school student on file and make these records available to the TEA, upon request in the requested electronic format;

(9) meet all federal and state requirements for educating students with disabilities;

(10) publish on the school district's or charter school's Internet website an Informed Choice Report that includes all of the components required under §70.1031 of this title (relating to Informed Choice Reports);

(11) provide a contingency plan for the continuation of instructional services to all TxVSN Online School (OLS) program students allowing them to complete their TxVSN OLS program subject areas or courses in the event that the contract or agreement through which the TxVSN OLS program instructional services are provided is terminated or a TxVSN OLS program subject area or course becomes unavailable to the student;

(12) ensure a maximum class size limit of 40 students in a single section of a Grades 5-12 course and ensure that the class size does not exceed the maximum allowed by law and a charter school's charter, as applicable, whichever is less;

(13) organize, retain in a centralized unit or office within the organizational structure of the TxVSN online school, and make available to the TEA, upon request in the requested electronic format, the following:

(A) the same financial documentation that is required of a traditional campus and documentation sufficient to demonstrate successful course completion;

(B) detailed records that support the program of instruction; and

(C) detailed records that document student participation in the TxVSN online school and grades earned;

(14) require contractors to retain and make available to the TEA, upon request in the requested electronic format, any and all financial and programmatic records, including books, documents, papers, and records, which are directly pertinent to that specific contract for a minimum of seven years from the day the final state funding payment is made and all other pending matters are closed, including resolution of any audits that started within the seven-year retention period, in accordance with the record retention requirements for federal and state programs as mandated by the Texas State Library and Archives Commission; and

(15) ensure the ongoing security of all data and its accessibility to the TEA in the requested electronic format.

(f) TxVSN online schools may:

(1) determine the number of courses a student takes at one time based on individual student needs; however, course placement decisions must enable a student to make reasonable progress toward graduation in a timely manner;

(2) lend equipment to a student and the parents/legal guardians of a student participating in the TxVSN online school for the duration of the student's enrollment in the TxVSN online school; and

(3) subsidize or reimburse a student or the parents/legal guardians of a student participating in the TxVSN online school for Internet connectivity for the duration of the student's participation in the TxVSN online school.

(g) TxVSN online schools may not:

(1) deny participation to any student based on ability, language, disability, socio-economic status, or access to or familiarity with technology required for completion of the course or instructional program;

(2) give a student or the parents/legal guardians of a student participating in the TxVSN OLS program ownership of any equipment; or

(3) provide payment to a student or the parents/legal guardians of a student participating in the TxVSN OLS program for:

(A) TxVSN OLS program subject areas or courses;

(B) services or materials; or

(C) any other purpose, other than subsidy or reimbursement for Internet connectivity for the duration of the student's participation in the TxVSN OLS program.

(h) Charter schools serving as TxVSN online schools shall:

(1) operate in compliance with their charter and applicable laws, rules, and regulations;

(2) continue current education programs and activities at existing physical location(s) and offer the education program as described in the charter;

(3) obtain approval from the commissioner of education for a charter amendment to change the educational program prior to making the change in the educational program as required in §100.1033(c) of this title (relating to Charter Amendment); and

(4) count students enrolled in the TxVSN online school toward the charter's enrollment cap and ensure that the charter does not exceed their total enrollment cap.

§70.1013. Texas Virtual School Network Student Eligibility.

(a) A student is eligible to enroll in a course provided by the Texas Virtual School Network (TxVSN) only if:

(1) the student on September 1 of the school year:

(A) is younger than 21 years of age; or

(B) is younger than 26 years of age and entitled to the benefits of the Foundation School Program under the Texas Education Code, §42.003;

(2) the student has not graduated from high school; and

(3) the student:

(A) is otherwise eligible to enroll in a public school in this state; or

(B) the student is a dependent of a member of the United States military, was previously enrolled in high school in this state, and no longer resides in this state as a result of a military deployment or transfer.

(b) A student is eligible to enroll full time in courses provided through the TxVSN only if:

(1) the student was enrolled in a public school in this state in the preceding school year;

(2) the student has been placed in substitute care in this state, regardless of whether the student was enrolled in a public school in this state in the preceding school year; or

(3) the student:

(A) is a dependent of a member of the United States military;

(B) was previously enrolled in high school in this state; and

(C) no longer resides in this state as a result of a military deployment or transfer.

(c) If a student has not provided required evidence of eligibility to enroll, a TxVSN online school may:

(1) enroll a student provisionally for ten school days; and

(2) withdraw the student from the online school if the student does not provide the required evidence of eligibility within ten school days of the provisional enrollment.

(d) Upon enrolling a student provisionally, the TxVSN online school shall notify the student and the student's parents or guardians that the student will be withdrawn if documentation is not provided within the required timeframe.

§70.1023. Accountability.

(a) All Texas public school students enrolled in the Texas Virtual School Network (TxVSN) are required to take the statewide assessments as required in the Texas Education Code, §39.023.

(b) All school districts and charter schools participating in the TxVSN Online School (OLS) program are included in the state's academic accountability system.

§70.1025. Statewide Course Catalog Fees.

(a) A Texas Virtual School Network (TxVSN) course cost may not exceed the lesser of the cost of providing the course or $400.

(b) A school district or charter school may charge the course cost for enrollment in an electronic course provided through the TxVSN statewide course catalog to a student who:

(1) resides in Texas and is enrolled in a school district or charter school as a full-time student and enrolled in a course load greater than that normally taken by students in the equivalent grade level; or

(2) enrolls in a TxVSN course during the summer.

(c) A school district or charter school shall charge the course cost for enrollment in an electronic course provided through the TxVSN to a student who resides in Texas and is not enrolled in a school district or charter school.

(d) TxVSN central operations may only accept course payment from a school district or charter school.

(e) A school district or charter school that is not the provider district or charter school may charge a student a nominal fee, not to exceed $50, for enrollment in an electronic course provided through the TxVSN that exceeds the course load normally taken by students in the equivalent grade level. A juvenile probation department or state agency may charge a nominal fee, not to exceed $50, to a student under the supervision of the department or agency.

(f) A TxVSN statewide course catalog provider district shall receive:

(1) no more than 70% of the catalog course cost prior to a student successfully completing the course; and

(2) the remaining 30% of the catalog course cost when the student successfully completes the course.

§70.1027. Requirements for Educators of Electronic Courses.

(a) Each teacher of an electronic course, including a dual credit course, offered through the Texas Virtual School Network (TxVSN) by a provider district must be certified under the Texas Education Code (TEC), Chapter 21, Subchapter B, to teach that course and grade level or meet the credentialing requirements of the institution of higher education with which they are affiliated and that is serving as a provider district. In addition, each teacher:

(1) must:

(A) successfully complete a professional development course or program approved by TxVSN central operations before teaching an electronic course offered through the TxVSN; or

(B) have a graduate degree in online or distance learning and have demonstrated mastery of the International Association for K-12 Learning (iNACOL) National Standards for Quality Online Teaching; or

(C) have two or more years of documented experience teaching online courses for students in Grades 3-12 and have demonstrated mastery of the iNACOL National Standards for Quality Online Teaching; and

(2) must successfully complete one continuing professional development course specific to online learning every three years.

(b) Each teacher of an electronic course, including a dual credit course, offered through the TxVSN by a provider district must meet highly qualified teacher requirements under the Elementary and Secondary Education Act, as applicable.

(c) The iNACOL National Standards for Quality Online Teaching are adopted by the commissioner of education as the objective standard criteria for quality of an electronic professional development course as required by the TEC, §30A.113.

(1) A school district or charter school shall submit to TxVSN central operations any course the school district or charter school seeks to provide to teachers for authorization to teach electronic courses provided through the TxVSN.

(2) The Texas Education Agency (TEA) shall use the most recent iNACOL National Standards for Quality Online Teaching to evaluate professional development courses submitted by a school district or charter school for approval.

(d) School districts and charter schools serving as TxVSN provider districts shall affirm the preparedness of teachers of TxVSN electronic courses to teach public school-age students in a highly interactive online classroom and shall:

(1) maintain records documenting:

(A) successful initial completion of TxVSN-approved professional development, evidence of prior online teaching, or a graduate degree in online or distance learning; and

(B) teachers' demonstrated mastery of the iNACOL National Standards for Quality Online Teaching prior to teaching through the TxVSN;

(2) maintain records of successful completion of continuing professional development;

(3) maintain records documenting successful completion of TxVSN-approved professional development before the end of the school year for any teacher who is hired after the school year has begun; and

(4) make the records specified in this subsection available to the TEA and TxVSN central operations upon request.

§70.1029. Texas Virtual School Network Participation and Performance Standards.

The commissioner of education may revoke the right to participation in the Texas Virtual School Network (TxVSN) based on any of the following factors:

(1) noncompliance with relevant state or federal laws;

(2) noncompliance with requirements and assurances outlined in the contractual agreements with TxVSN central operations and/or the provisions of this subsection and the Texas Education Code, Chapter 30A; or

(3) consistently poor student performance rates as evidenced by results on statewide student assessments, student withdrawal rates, student completion rates, successful completion rates, or campus accountability ratings.

§70.1035. Rights Concerning the Texas Virtual School Network.

(a) At the time and in the manner that a school district or charter school informs students and parents about courses that are offered in the district's or school's traditional classroom setting, the district or school shall notify parents and students of the option to enroll in an electronic course offered through the Texas Virtual School Network (TxVSN).

(b) A school district or charter school in which a student is enrolled as a full-time student may not unreasonably deny the request of a parent/legal guardian of a student to enroll the student in an electronic course offered through the TxVSN.

(c) A school district or charter school is not considered to have unreasonably denied a request to enroll a student in an electronic course if:

(1) the district or school can demonstrate that the electronic course does not meet state standards or standards of the district or school that are of equivalent rigor as the district's or school's standards for the same course provided in a traditional classroom setting;

(2) a student attempts to enroll in a course load that:

(A) is inconsistent with the student's high school graduation plan; or

(B) could reasonably be expected to negatively affect the student's performance on an assessment instrument administered under the Texas Education Code, §39.023; or

(3) the student requests permission to enroll in an electronic course at a time that is not consistent with the enrollment period established by the school district or charter school providing the course.

(d) Notwithstanding subsection (c)(3) of this section, a school district or charter school that provides an electronic course through the TxVSN shall make all reasonable efforts to accommodate the enrollment of a student in the course under special circumstances.

(e) A parent/legal guardian may appeal to the commissioner of education a school district's or charter school's decision to deny a request to enroll a student in an electronic course offered through the TxVSN.

(1) The parent shall submit a written request to the commissioner within ten business days of receiving a final decision in the local grievance process that the student was denied the opportunity to enroll in an electronic course offered through the TxVSN in accordance with guidelines established by the Texas Education Agency.

(2) An appeal under this section shall be based on review of the local record developed in the grievance process.

(3) If the commissioner determines that a student was unreasonably denied the opportunity to enroll in an electronic course, the school district or charter school shall immediately enroll the student in the electronic course or a similar course in accordance with the enrollment windows established by the provider.

(4) The commissioner's decision under this section is final and may not be appealed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2013.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER B. ADULT BASIC AND SECONDARY EDUCATION

The State Board of Education (SBOE) adopts amendments to §§89.21, 89.30, 89.31, and 89.33-89.35 and the repeal of §89.29, concerning adult education programs. The amendments are adopted without changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9579) and will not be republished. The sections address provisions relating to adult basic and secondary education. The adopted amendments and repeal update the rules to reflect statutory changes that provide for competitive procurement of service providers under the Adult Education and Family Literacy Act (AEFLA) program required by the Texas Education Code (TEC), §29.2535, as added by Senate Bill 1, 82nd Texas Legislature, 2011.

Senate Bill (SB) 1, 82nd Texas Legislature, First Called Session, 2011, added the TEC, §29.2535, requiring the Texas Education Agency (TEA) to adopt rules to provide for a competitive procurement process to award contracts to service providers of adult education programs. As required by the TEC, §29.2535, the commissioner of education has exercised rulemaking authority to adopt new 19 TAC §89.1301, Service Provider Contracts for Adult Education Programs, which became effective September 20, 2012.

The adopted revisions to 19 TAC Chapter 89, Subchapter B, update the rules to reflect statutory changes that provide for a competitive procurement of the service provider contracts under the AEFLA and other technical edits, as follows.

Section 89.21, Definitions, was amended to make a technical edit in paragraph (2) to remove the hyphen in the phrase "federally approved." A technical edit was also made in paragraph (4) to correct punctuation.

Section 89.29, Allocation of Funds Prior to School Year 2010-2011, was repealed as it applied only to the timeframe prior to the 2010-2011 school year.

Section 89.30, Allocation of Funds Beginning with School Year 2010-2011, was amended to add an ending date to the funding allocation process outlined in the section. A new subsection (f) was added to provide a reference to the commissioner's authority for future allocations. The section title was also changed to "Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013."

Section 89.31, Payment of Funds, was amended in subsection (a) to add an ending date for use of the current formula for allocations and the payment of funds.

Section 89.33, Tuition and Fees, was amended consistent with commissioner's rule to clarify that tuition and fees for adult education instructional programs may not be charged without specific statutory authorization. The language also specifies that any such generated funds must be used for the adult education instructional program.

Section 89.34, Other Provisions, was amended to update subsection (b) to reflect current practice and to make language consistent with that found in the commissioner's rule.

Section 89.35, Revocation and Recovery of Funds, was amended to make a technical correction in subsection (a)(5) to add the word "Agency" to the reference to the TEA.

The adopted amendments and repeal have procedural and reporting requirements. Beginning in school year 2013-2014, the allocation of state and federal education funds will be awarded through a competitive procurement process as provided by commissioner's rule. The adopted amendments and repeal have no new locally maintained paperwork requirements for current service providers. Any new service providers would be required to maintain student and program records.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE took action to approve the amendments and repeal for second reading and final adoption during its February 1, 2013, meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the amendments and repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2013-2014 school year. The earlier effective date will allow the new provisions to take effect prior to the start of the federal program year, which is July 1, 2013. The effective date for the revisions is 20 days after filing as adopted.

No public comments were received on the proposal.

19 TAC §§89.21, 89.30, 89.31, 89.33 - 89.35

The amendments are adopted under the Texas Education Code (TEC), §7.102(c)(16) and §29.253, which authorize the SBOE

to adopt rules for adult education programs. TEC, §29.2535, as added by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, authorizes the Texas Education Agency to adopt rules to provide for a competitive procurement process to award contracts to service providers of adult education programs.

The amendments implement the Texas Education Code, §§7.102(c)(16), 29.253, and 29.2535.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300522
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: February 28, 2013
Proposal publication date: December 7, 2012
For further information, please call: (512) 475-1497

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19 TAC §89.29

The repeal is adopted under the Texas Education Code (TEC), §7.102(c)(16) and §29.253, which authorize the SBOE to adopt rules for adult education programs. TEC, §29.2535, as added by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, authorizes the Texas Education Agency to adopt rules to provide for a competitive procurement process to award contracts to service providers of adult education programs.

The repeal implements the Texas Education Code, §§7.102(c)(16), 29.253, and 29.2535.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300523
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: February 28, 2013
Proposal publication date: December 7, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.63

The Texas Board of Architectural Examiners adopts the repeal of §1.63, concerning Replacement of Certificate, without changes to the proposal as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9233) and will not be republished.

The board has determined that the rule is redundant of another rule allowing for the issuance of duplicate certificates and is therefore unnecessary.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300563
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §1.67

The Texas Board of Architectural Examiners adopts an amendment to §1.67, concerning Emeritus Status, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9234) and will not be republished.

The amendment pertains to the registration of certain architects as emeritus architects. The amendment makes the terms "emeritus architect" and "practice of architecture" uppercase to signify that those terms are defined in the board's rules. The amendment also revises a sentence relating to applications to return to active status from emeritus status to change it from the passive to the more easily understood active tense.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.357, Texas Occupations Code, which directs the board to establish procedures by rule for architects to place their registrations on emeritus status and return them to active status, subject to specified qualifications. The amendment is also adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300564

Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.142

The Texas Board of Architectural Examiners adopts an amendment to §1.142, concerning Competence, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9235) and will not be republished.

The amendment pertains to gross incompetency by an architect engaged in the practice of architecture. The board received public comment during the board's review of its rules to determine if the purpose for which they were adopted continues to exist. The commenter requested an amendment to the rule to specify that the objective standard to determine gross incompetency include consideration of the circumstances and conditions involved in the conduct in question. The commenter's stated intent was to ensure a uniform consistent application of the rule to all architects in the same or similar circumstances, regardless of the local custom or practice of architects and building officials. The board agreed that the objective standard of gross incompetency should take into consideration the particular circumstances and conditions in question. The amendment also inserts a parenthetical description of a rule which is cross-referenced in §1.142.

No other comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for persons regulated by the board. The amendment is also adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300565
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §1.144

The Texas Board of Architectural Examiners adopts an amendment to §1.144, concerning Dishonest Practice, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9236) and will not be republished.

The amendment pertains to dishonest practice by an architect. The amendment deletes a requirement that architects publish their registration numbers in advertising appearing in directories, web sites, and newspapers. The amendment was requested through public comment received during the review of the board's rules. The commenter noted many architects do not follow the rule, architects often have little control over listings in telephone directories, and it is not clear what the rule was intended to accomplish. The board agreed with the comment and adopts the amendment in response to public comment.

No other comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.203, Texas Occupations Code, which restricts the board's authority to adopt rules restricting advertising by board registrants. The amendment is also adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300566
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §1.152

The Texas Board of Architectural Examiners adopts the repeal of §1.152, concerning Malicious Injury to Professional Reputation, without changes to the proposal as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9236) and will not be republished.

The rule prohibits architects from maliciously injuring the professional reputation of others under certain circumstances. During the course of the review of rules, the board received public comment recommending the repeal of the rule primarily due to free speech concerns. The board agreed with public comment and also determined the rule is largely unenforceable due to necessary exceptions to the rule and the chilling effect upon an architect's assessment of the work of another. The board also noted that the rule could be construed very broadly to restrict damage to the professional reputation of anyone for any conduct unrelated to the practice of architecture, raising the issue of whether the rule exceeds the board's statutory authority.

No other comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Ex-

aminers with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300567
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §1.177

The Texas Board of Architectural Examiners adopts an amendment to §1.177, concerning Administrative Penalty Schedule, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9237) and will not be republished.

The amendment pertains to the administrative penalty schedule for violations of laws relating to the practice of architecture. The amendment makes a technical correction to a provision which requires a registrant or an applicant or candidate for registration to respond to an inquiry from the board within 30 days. The amendment inserts the word "not" so the provision designates the failure to reply a moderate violation instead of a minor violation if a response to the inquiry is "not" made within 30 days. The amendment corrects an error in the rule and gives effect to the board's original intent.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300568
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.63

The Texas Board of Architectural Examiners adopts the repeal of §3.63, concerning Replacement of Certificate, without changes to the proposal as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9237) and will not be republished.

The board has determined that the rule is redundant of another rule allowing for the issuance of duplicate certificates and is therefore unnecessary.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300569
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.142

The Texas Board of Architectural Examiners adopts an amendment to §3.142, concerning Competence, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9238) and will not be republished.

The amendment pertains to gross incompetency by a landscape architect engaged in the practice of landscape architecture. The amendment revises the standard for determining gross incompetency in the practice of landscape architecture to include consideration of the particular circumstances and conditions of the particular situation in which the landscape architect was practicing. The amendment is identical to a similar amendment the board is proposing in response to public comment on the corresponding rule regarding the practice of architecture. The amendment also inserts a parenthetical description of a rule which is cross-referenced in §3.142.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for persons regulated by the board. The amendment is also adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300570
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §3.144

The Texas Board of Architectural Examiners adopts an amendment to §3.144, concerning Dishonest Practice, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9239) and will not be republished.

The amendment pertains to dishonest practice by a landscape architect. The amendment deletes a requirement that landscape architects publish their registration numbers in advertising appearing in directories, web sites, and newspapers. The amendment was requested through public comment received during the review of the board's rules relating to architecture. The commenter noted many architects do not follow the rule, architects often have little control over listings in telephone directories, and it is not clear what the rule was intended to accomplish. The board agreed with the comment and likewise adopts the amendment regarding landscape architecture.

No other comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.203, Texas Occupations Code, which restricts the board's authority to adopt rules restricting advertising by board registrants. The amendment is also adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300571
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §3.152

The Texas Board of Architectural Examiners adopts the repeal of §3.152, concerning Malicious Injury to Professional Reputation, without changes to the proposal as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9239) and will not be republished.

The rule prohibits landscape architects from maliciously injuring the professional reputation of others under certain circumstances. During the course of the review of rules, the board received public comment recommending the repeal of an identical rule applicable to architects primarily due to free speech concerns. The board agreed with public comment and also determined the rule is largely unenforceable due to necessary exceptions to the rule and the chilling effect upon an architect's assessment of the work of another. The board also noted that the rule could be construed very broadly to restrict damage to the professional reputation of anyone for any conduct unrelated to the practice of architecture, raising the issue of whether the rule exceeds the board's statutory authority. The board adopts the repeal of the rule for the same reasons it adopts the repeal of the rule relating to architects.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300572
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §3.177

The Texas Board of Architectural Examiners adopts an amendment to §3.177, concerning Administrative Penalty Schedule, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9240) and will not be republished.

The amendment pertains to the administrative penalty schedule for violations of laws relating to the practice of landscape architecture. The amendment makes a technical correction to a provision which requires a registrant or an applicant or candidate for registration to respond to an inquiry from the board within 30 days. The amendment inserts the word "not" so the provision designates the failure to reply a moderate violation instead of a minor violation if a response to the inquiry is "not" made within 30 days. The amendment corrects an error in the rule and gives effect to the board's original intent.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300573
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.73

The Texas Board of Architectural Examiners adopts the repeal of §5.73, concerning Replacement of Certificate, without changes to the proposal as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9240) and will not be republished.

The board has determined that the rule is redundant of another rule allowing for the issuance of duplicate certificates and is therefore unnecessary.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300574
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.152

The Texas Board of Architectural Examiners adopts an amendment to §5.152, concerning Competence, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9241) and will not be republished.

The amendment pertains to gross incompetency by a registered interior designer engaged in the practice of interior design. The amendment revises the standard for determining gross incompetency in the practice of interior design to include consideration of the particular circumstances and conditions of the particular situation in question. The amendment is identical to a similar amendment the board is proposing in response to public comment on the corresponding rule regarding the practice of architecture.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for persons regulated by the board. The amendment is also adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300575
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §5.154

The Texas Board of Architectural Examiners adopts an amendment to §5.154, concerning Dishonest Practice, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9242) and will not be republished.

The amendment pertains to dishonest practice by a registered interior designer. The amendment deletes a requirement that registered interior designers publish their registration numbers in advertising appearing in directories, web sites, and newspapers. The amendment was requested through public comment received during the review of the board's rules relating to architecture. The commenter noted many architects do not follow the rule, architects often have little control over listings in telephone directories, and it is not clear what the rule was intended to accomplish. The board agreed with the comment and likewise adopts the amendment regarding registered interior designers.

No other comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.203, Texas Occupations Code, which restricts the board's authority to adopt rules restricting advertising by board registrants. The amendment is also adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300576
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §5.161

The Texas Board of Architectural Examiners adopts the repeal of §5.161, concerning Malicious Injury to Professional Reputation, without changes to the proposal as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9242) and will not be republished.

During the course of the review of rules, the board received public comment recommending the repeal of an identical rule applicable to architects primarily due to free speech concerns. The board agreed with public comment and also determined the rule is largely unenforceable due to necessary exceptions to the rule and the chilling effect upon an architect's assessment of the work of another. The board also noted that the rule could be construed very broadly to restrict damage to the professional reputation of anyone for any conduct unrelated to the practice of architecture, raising the issue of whether the rule exceeds the board's statutory authority. The board adopts the repeal of the rule for the same reasons it adopts the repeal of the rule relating to architects.

No other comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300577
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §5.187

The Texas Board of Architectural Examiners adopts an amendment to §5.187, concerning Administrative Penalty Schedule, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9243) and will not be republished.

The amendment pertains to the administrative penalty schedule for violations of laws relating to the professional practice of registered interior designers. The amendment makes a technical correction to a provision which requires a registrant or an applicant or candidate for registration to respond to an inquiry from the board within 30 days. The amendment inserts the word "not" so the provision designates the failure to reply a moderate violation instead of a minor violation if a response to the inquiry is "not" made within 30 days. The amendment corrects an error in the rule and gives effect to the board's original intent.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300578
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: March 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-9040

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER E. REGISTRATION REGULATIONS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State

Health Services (department), adopts the repeal of §289.227 and new §289.227, concerning the use of radiation machines in the healing arts. New §289.227 is adopted with changes to the proposed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5965). The repeal of §289.227 is adopted without changes and will not be republished.

BACKGROUND AND PURPOSE

The repeal and new of §289.227 are the result of extensive revisions made throughout the section, reorganization of current requirements, and the addition of new requirements generated during six draft revisions involving stakeholder input. More specifically, this proposal undertakes to: add definitions for fluoroscopically-guided interventional procedures and reference levels; revise the kilovolt peak half-value layer table; change the requirements for calibration of the dosimetry system used to measure radiation output; add requirements for the development of a radiation protocol committee for facilities that perform fluoroscopically-guided interventional procedures; add requirements for the development of a radiation safety awareness training program for the use of fluoroscopy radiation machines; add requirements for the development of a radiation protocol committee for facilities that perform computed tomography procedures; require an equipment performance evaluation at installation and re-installation of radiation machines; revise equipment performance evaluation intervals; change record keeping intervals; add new record retention requirements; correct rule citation references; and update terminology to be consistent with and reflect current technology.

The department determined these new requirements should be put in place because of the increased incidence of radiation over-exposures in other states resulting from the improper use in the healing arts of fluoroscopy and computed tomography radiation machines. In so doing, the department is taking a proactive approach by requiring, among other things, that users of these machines receive radiation safety training specific to these machines and procedures so that the risk of dangerous and unnecessary radiation over-exposures is reduced in connection with performing fluoroscopically-guided interventional procedures and computed tomography procedures.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.227 has been reviewed and the department has determined that the reasons for adopting this section continue to exist because of the continuing and increasing need to employ radiation safety procedures in connection with the use of radiation machines in the healing arts.

SECTION-BY-SECTION SUMMARY

New §289.227(b)(4), concerning the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 45 Code of Federal Regulations (CFR), Parts 160 and 164, informs users of radiation machines for the healing arts that full compliance shall be achieved concerning privacy standards under HIPAA.

New §289.227(e)(36) includes a definition for "Fluoroscopically-Guided Interventional Procedures" and includes a list to assist the registrant in identifying some of the procedures that would be considered fluoroscopically-guided interventional procedures.

New §289.227(e)(76) gives a definition for "Reference level" to assist registrants in determining if acceptable image quality can be achieved at a lower radiation output and to provide a benchmark for comparison of imaging equipment performance.

In §289.227(i)(14), the requirement for an intercomparison of the dosimetry system is deleted to avoid possible inaccurate results.

Concerning §289.227(k)(4)(A)(i), the kilovolt peak half-value layer table is updated to achieve consistency with 21 CFR, Part 1020.

In reference to §289.227(m)(3)(D)(i), (n)(3)(A)(ii), and (o)(1), the 12-month interval for performance of radiation output measurements, entrance exposure rates, and equipment performance evaluations on computed tomography and fluoroscopy radiation machines is changed from annually to "not to exceed 14 months" to provide the physicist or facility with sufficient time to permit coordination of this testing with that also required for other types of radiation machines.

New §289.227(m)(9) requires registrants of facilities that perform fluoroscopically-guided interventional procedures to create a radiation protocol committee, to establish and implement fluoroscopically-guided interventional protocols, to ensure that radiation machine reference levels are set and monitored, and that action is taken if the reference levels are exceeded.

New §289.227(m)(9)(E)(iii) requires that the radiation safety awareness training for physicians performing fluoroscopically-guided interventional procedures be completed within two years from the effective date of the rule to provide physicians with sufficient time to complete the training.

After two years, new §289.227(m)(9)(E)(iv) requires physicians to complete the radiation safety awareness training prior to performing fluoroscopically-guided interventional procedures to ensure that physicians practicing in this area are aware of the safety measures to be implemented for safe use of the radiation machines.

New §289.227(m)(9)(E)(v), for time and cost saving purposes, permits the 8 hours of Category 1 Continuing Medical Education Unit (CMEU) training in radiation safety awareness to be obtained through web-based online classes.

New §289.227(n)(6) requires registrants of facilities that perform computed tomography procedures to create a radiation protocol committee, to establish and implement computed tomography system protocols, to ensure that radiation machine reference levels are set and monitored, and that action is taken if the reference levels are exceeded.

New §289.227(o)(2) requires that an equipment performance evaluation is performed within 30 days of installation or re-installation for each radiation machine to document that all required parameters of the machine are tested and are operating within established limits.

Throughout new §289.227, minor grammatical and typographical corrections are made, technical terminology is updated, and rule reference citations are corrected and/or updated.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenters were individuals and/or groups, including: Electra Memorial Hospital; M. D. Anderson Cancer Center; Medical and Radiation Physics; Memorial Hermann Healthcare System; Methodist

Hospital Houston Medical Center; Northpoint Cancer Center; Radiological Physics; Seton Hospital, Austin TX; United Medical Maintenance Services; and University of Texas Health Science Center at Houston. The commenters were in favor of the rules; however, they suggested recommendations for change as discussed in the summary of comments.

COMMENT: Concerning new §289.227 in general, three commenters were in favor of the new radiation protocol committee requirements due to the increased use of fluoroscopy and computed tomography radiation machines. The commenters stated that the new rule provides the registrant authority to ensure user compliance with the requirements within their facilities, specifically the radiation safety awareness training required for physicians who perform fluoroscopically-guided interventional procedures.

RESPONSE: The commission acknowledges the comments. The public benefit of administering and enforcing the new rule enhances and continues to protect the public, patients, workers, and the environment from unnecessary exposure to radiation. No change was made to the rule as a result of the comments.

COMMENT: A commenter stated that there could be an improvement regarding the consistency of how the rule is enforced from one facility to another.

RESPONSE: The commission acknowledges the comment. To ensure enforcement consistency, the department holds annual inspector training. No change was made to the rule as a result of the comment.

COMMENT: Concerning §289.227(e)(2), one commenter suggested that the department add a statement after the definition of air kerma to clarify that a nationally recognized standard conversion factor must be used when exposure in air measured in Roentgens is converted to dose in air measured in Gray.

RESPONSE: The commission agrees with the commenter and the department added language to be compatible with current terminology.

COMMENT: In reference to §289.227(e)(30), a commenter suggested that the definition for entrance exposure should include entrance air exposure (R) and entrance air dose Gy (air kerma).

RESPONSE: The commission agrees with the commenter and the department added the suggested language to the definition for entrance exposure.

COMMENT: A commenter inquired if the definition for fluoroscopically-guided interventional procedures identified in §289.227(e)(36) would be expanded to list additional procedures that could be considered interventional procedures.

RESPONSE: The commission acknowledges the comment. The phrase, "may include but not be limited to," is stated prior to the list of fluoroscopically-guided interventional procedures to allow each radiation protocol committee the discretion to include additional interventional procedures that are specific to their operations. No change was made to the rule as a result of the comment.

COMMENT: In reference to §289.227(m)(3)(D) and (n)(3), two commenters suggested that the department delete the requirement that only licensed medical physicists are to measure the radiation output from fluoroscopy, compact type lower dose fluoroscopy, and computed tomography radiation machines.

RESPONSE: The commission disagrees with the comment. Fluoroscopy and computed tomography modalities are complicated radiation machines. Therefore, performing the radiation dose measurements for these machines requires the individual performing the testing to have specialized training. No change was made to the rule as a result of the comment.

COMMENT: A commenter expressed concern that the interval in §289.227(m)(3)(D)(i) and (n)(3)(A)(ii) concerning radiation output surveys of radiation machines is extended from 12 to 14 months.

RESPONSE: The commission acknowledges the comment. The department allows the option to perform surveys annually or at intervals not to exceed 14 months. This assists physicists to coordinate radiation surveys for facilities in remote locations and when the required radiation survey intervals differ between various modalities. No change was made to the rule as a result of the comment.

COMMENT: Concerning §289.227(m)(6)(C), a commenter requested that the department change the source-to-image distance requirement for a portable C-arm fluoroscopy radiation machine from "less than 45 inches" to "not more than 50 inches" to allow a greater tolerance for error.

RESPONSE: The commission acknowledges the comment. The rule is written to be compatible with 21, Code of Federal Regulations, §2010.32, which does not allow for a 50 centimeter source-to-image distance. No change was made to the rule as a result of the comment.

COMMENT: In reference to §289.227(m)(9), the commenter expressed concern that some cardiologists feel they are exempt from rule requirements concerning fluoroscopically-guided interventional procedures and the radiation safety awareness training.

RESPONSE: The commission acknowledges the comment. As specified in §289.227(m)(9), any physician, as well as individuals to whom a physician has delegated authority pursuant to the Occupations Code, Chapter 601, and the applicable rules of the Texas Medical Board, that performs fluoroscopically-guided interventional procedures shall meet compliance, with the exception of board certified radiologists and radiation oncologists. No change was made to the rule as a result of the comment.

COMMENT: Concerning §289.227(m)(9), a commenter requested that the requirement to form a radiation protocol committee be deleted from rule because the radiation safety officer already performs the responsibilities and stated concern that unqualified persons would be on the committee.

RESPONSE: The commission disagrees with the comment. Due to radiation overexposures documented in other states, the department is taking a proactive approach to require registrants to establish a radiation protocol committee for fluoroscopically-guided interventional procedures to ensure that the dose for each procedure is monitored and that required training is provided. It is the responsibility of the registrant to appoint the members of the radiation protocol committee to meet compliance with the rule. No change was made to the rule as a result of the comment.

COMMENT: One commenter inquired if pain clinics that perform fluoroscopically-guided interventional procedures are required to comply with §289.227(m)(9), concerning the establishment of a radiation protocol committee and physician's training in radiation safety awareness.

RESPONSE: The commission acknowledges the comment. If fluoroscopically-guided interventional procedures as described in rule are performed at the clinic, compliance with §289.227(m)(9) shall be achieved. The radiation control program will provide guidance concerning fluoroscopically-guided interventional and computed tomography procedures and post that information on the program's website. No change was made to the rule as a result of the comment.

COMMENT: A commenter expressed concern that when pain clinics are required to comply with §289.227(m)(9) concerning the establishment of a radiation protocol committee, the facility may not have persons that would meet the committee member requirements.

RESPONSE: The commission acknowledges the comment. The rule includes a provision in §289.227(m)(9)(A)(i)(II) that one or more registrant may form a cooperative radiation protocol committee as long as each facility has a representative on the committee. No change was made to the rule as a result of the comment.

COMMENT: A commenter stated that a regulatory guide for registrants would be helpful in reference to §289.227(m)(9) and (n)(6) concerning fluoroscopically-guided interventional and computed tomography protocol committees.

RESPONSE: The commission agrees with the commenter. The radiation control program will provide guidance concerning fluoroscopically-guided interventional and computed tomography protocol committees and post that information on the program's website. No change was made to the rule as a result of the comment.

COMMENT: A commenter expressed that, because of competition between clinics, it may be difficult for pain clinics to comply with §289.227(m)(9)(A)(i)(II) if they choose to establish a joint radiation protocol committee.

RESPONSE: The commission acknowledges the comment. All registrants performing fluoroscopically-guided interventional procedures are required to establish a radiation protocol committee to maintain compliance with the rule. No change was made to the rule as a result of the comment.

COMMENT: In reference to §289.227(m)(9)(C)(i)(II) and (n)(6)(C)(i)(I), one commenter suggested language be added to the rule listing the various dosimetry devices that could be used in analysis and documentation of the radiation dose.

RESPONSE: The commission acknowledges the comment. The registrant's radiation protocol committee is required to select the method used to document the radiation output during fluoroscopically-guided interventional and computed tomography procedures. No change was made to the rule as a result of the comment.

COMMENT: Concerning §289.227(m)(9)(E), one commenter inquired if there will be separate training requirements listed for the various fluoroscopically-guided interventional procedures.

RESPONSE: The commission acknowledges the comment. The training requirements, beyond what is stated in rule, are to be determined by the registrant's radiation protocol committee. No change was made to the rule as a result of the comment.

COMMENT: In reference to §289.227(m)(9)(E), a commenter inquired if the physician's specialty and the fluoroscopically-guided interventional procedures performed will be categorized or considered in the required radiation safety awareness training.

RESPONSE: The commission acknowledges the comment. The radiation safety awareness training shall include radiation protection, proper use of fluoroscopy radiation machines and dose reduction techniques in addition to several other topics outlined in rule. No change was made to the rule as a result of the comment.

COMMENT: Concerning §289.227(m)(9)(E), one commenter expressed concern that rule only allows physicians to use a radiation machine for fluoroscopically-guided interventional procedures.

RESPONSE: The commission acknowledges the comment and for clarification the department added the words "as well as individuals to whom a physician has delegated authority pursuant to the Occupations Code, Chapter 601, and the applicable rules of the Texas Medical Board."

COMMENT: A commenter inquired if the "hands-on" training for fluoroscopically-guided interventional procedures, required in §289.227(m)(9)(E)(ii)(I), could be provided by video.

RESPONSE: The commission acknowledges the comment. The rule requires that the radiation safety awareness training include demonstration of the proper operation of fluoroscopic radiation machines used for interventional purposes which cannot be accomplished by the use of a video. No change was made to the rule as a result of the comment.

COMMENT: In reference to §289.227(n)(6), a commenter inquired if there would be a grace period for computed tomography dose tracking.

RESPONSE: The commission acknowledges the comment. The department anticipates filing the rule in the *Texas Register* in February 2013, with an effective date of May 1, 2013, to allow stakeholders approximately 4 months to implement the new requirements. No change was made to the rule as a result of the comment.

COMMENT: In reference to §289.227(n)(6), the commenter requested that the department include an exemption from establishing a radiation protocol committee for oncology facilities where computed tomography procedures are performed.

RESPONSE: The commission acknowledges the comment. If the computed tomography radiation machine is used for simulation of radiation therapy treatments only, the facility is already exempt in accordance with §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators, and Electronic Brachytherapy Devices). However, if the computed tomography radiation machine is used for diagnostic purposes, compliance with §289.227 shall be met. No change was made to the rule as a result of this comment.

COMMENT: Concerning §289.227(n)(6)(D)(i), one commenter suggested the wording be changed to reflect the current testing procedures and radiation units of measurements used when determining the radiation output of computed tomography systems.

RESPONSE: The commission acknowledges the comment and the department updated the terminology used when determining the radiation output of computed tomography systems.

COMMENT: In reference to §289.227(s), a commenter inquired why the record retention requirement for equipment performance evaluations was extended to 10 years.

RESPONSE: The commission acknowledges the comment. The radiation control program's inspection intervals extend from 2 to 5 years depending on the type of radiation machine registered. The increased interval will ensure that the records are available for review during the state inspection. No change was made to the rule as a result of the comment.

The following changes will update technical terminology: delete the word "monitoring" and replace it with "detection" and delete the word "panel" after the word "control" in both places in the rule reference; correct or update rule reference citations; correct minor grammatical errors; add language to clarify the calibration interval for dosimetry systems; add language to clarify the individuals that may perform fluoroscopically-guided interventional procedures; and delete the phrase "any light leaks corrected" to avoid duplication.

Technical terminology is updated in §289.227(e)(30), (31) and (40) and (f)(2)(B); the figure referenced in (j); (l)(5); (m)(1)(A)(iii), (7)(B)(iii)(II) and (E)(i)(V), (9)(D)(i) and (ii); (n)(6)(C)(i)(I); (n)(6)(D)(i); and (o)(6)(G).

In reference to §289.227(e)(64), the word "monitoring" is deleted and replaced with "detection" for technical accuracy.

Rule reference citations are corrected and/or updated in §289.227(g)(1); (i)(14); (o)(8); and the figure referenced in §289.227(s)(1).

Grammatical corrections include "locations(s)" was changed to "location(s)" in §289.227(i)(5); "registrants" was changed to "registrant" in §289.227(m)(9)(A)(i)(II) and in the figure referenced in §289.227(s)(1)(P) the phrase "physician uses" was changed to "physician performs."

The language in proposed §289.227(i)(14)(B) is deleted and replaced with new §289.227(i)(14)(B) and (C) to clarify the calibration interval for dosimetry systems.

In the figure referenced in §289.227(j) the words "Air Kerma Limit" are added to update technical terminology.

For technical accuracy in §289.227(k)(7), the words "X-ray control panel" are changed to "X-ray control" each time used in the reference.

In reference to §289.227(m)(9)(C)(i)(I), (m)(9)(E)(iii) and (iv), the words "as well as individuals to whom a physician has delegated authority pursuant to the Occupations Code, Chapter 601, and the applicable rules of the Texas Medical Board," are added to clarify the individuals that may perform fluoroscopically-guided interventional procedures.

Regarding §289.227(m)(9)(E), "for physicians" is deleted after "training" to clarify the title of the subparagraph.

Concerning §289.227(m)(9)(E)(vi), the words "each physician's" are deleted after "maintain" to clarify record retention requirements.

In reference to §289.227(p)(3), "any light leaks corrected" is deleted from the sentence "Darkroom light leak tests shall be performed and any light leaks corrected at intervals not to exceed 6 months." The requirement for correction or repair of light leaks is referenced in §289.227(p)(5).

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §289.227

STATUTORY AUTHORITY

The repeal is authorized under the Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; as well as Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

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Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 1, 2013
Proposal publication date: August 10, 2012
For further information, please call: (512) 776-6972

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25 TAC §289.227

STATUTORY AUTHORITY

The new rule is authorized under the Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; as well as Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

§289.227. Use of Radiation Machines in the Healing Arts.

(a) Purpose. This section establishes requirements for the use of radiation machines in the healing arts.

(b) Scope.

(1) The registrant shall be responsible for directing the operation of the radiation machines under the administrative control of the registrant. The registrant shall assure that the requirements of this section are met in the operation of such radiation machines. All usage of such machines under this section shall be made by or under the supervision of a practitioner of the healing arts.

(2) In addition to the requirements of this section, all registrants, unless otherwise specified, are subject to the requirements of §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to

Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.226 of this title (relating to Registration of Radiation Machine Use and Services), and §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(3) The use of mammography radiation machines is subject to the requirements in §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography), and §289.234 of this title (relating to Mammography Accreditation). The use of dental radiation machines is subject to the requirements in §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines). However, dental radiation machines located in a facility that also has other healing arts radiation machines will be inspected at the intervals specified in §289.231(ll)(2) of this title, and equipment performance evaluations performed at the interval specified for a medical facility in subsection (o)(1) of this section. The use of radiation machines for veterinary medicine is subject to the requirements in §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines in Veterinary Medicine).

(4) An entity that is a "covered entity" as that term is defined in HIPAA (the Health Insurance Portability and Accountability Act of 1996, 45 Code of Federal Regulations, Parts 160 and 164) may be subject to privacy standards governing how information that identifies a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department making a referral of a potential violation to the U.S. Department of Health and Human Services.

(c) Prohibitions.

(1) The agency may prohibit use of radiation machines that pose significant threat or endanger occupational and public health and safety, in accordance with §289.205 of this title and §289.231 of this title.

(2) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed practitioner of the healing arts. This provision specifically prohibits intentional exposure for the following purposes:

(A) exposure of an individual for training, demonstration, or other non-healing arts purposes;

(B) exposure of an individual for the purpose of healing arts screening, except as authorized by §289.226(h) of this title; and

(C) exposure of an individual for the purpose of research, except as authorized by §289.226(t)(1) of this title.

(3) Non-image-intensified fluoroscopic systems shall not be used.

(d) Exemptions.

(1) Portable x-ray systems designed to be hand-held are exempt from the requirements of subsection (i)(11) of this section. The portable radiation machine shall be held by the tube housing support or handle.

(2) Individuals who are sole practitioners and sole operators and the only occupationally exposed individual are exempt from the following requirements:

(A) §289.203(b) of this title, "Posting of notices to workers;"

(B) §289.203(c) of this title, "Instructions to workers;" and

(C) operating and safety procedures in accordance with subsection (i)(2) of this section.

(3) Registrants are exempt from the posting of the radiation area requirements in §289.231(x)(1) of this title provided that the operator has continuous surveillance and access control of the radiation area.

(e) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accessible surface--The external surface of the enclosure or housing provided by the manufacturer.

(2) Air kerma--The kinetic energy released in air by ionizing radiation. Kerma is the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy). For purposes of this section, when exposure in air measured in roentgen (R) is to be converted to dose in air measured in gray (Gy), a nationally recognized standard air conversion factor shall be used.

(3) Aluminum equivalent--The thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question. The nominal chemical composition of type 1100 aluminum alloy is 99% minimum aluminum, 0.12% copper.

(4) Attenuate--To reduce the exposure rate upon passage of radiation through matter.

(5) Attenuation block--A block or stack, having dimensions 20 centimeters (cm) by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation. The nominal chemical composition of type 1100 aluminum alloy is 99% minimum aluminum, 0.12% copper.

(6) Automatic exposure control (AEC)--A device that automatically controls one or more technique factors in order to obtain a required quantity of radiation at preselected locations (See definition for phototimer).

(7) Automatic exposure rate control (AERC)--A device that automatically controls one or more technique factors in order to obtain a required quantity of radiation per unit time at preselected locations.

(8) Barrier (See definition for protective barrier).

(9) Beam axis--A line from the source through the centers of the x-ray fields.

(10) Beam-limiting device--A device that provides a means to restrict the dimensions of the x-ray field.

(11) Beam quality (diagnostic x-ray)--A term that describes the penetrating power of the x-ray beam. This is identified numerically by half-value layer and is influenced by kilovolt peak (kVp) and filtration.

(12) Bone densitometer--A device intended for medical purposes to measure bone density and mineral content by x-ray transmission measurements through the bone and adjacent tissues.

(13) Calibration of instruments--The comparative response or reading of an instrument relative to a series of known radiation values over the range of the instrument.

(14) Category 1 continuing medical education units (CMEU)--Educational activities designated as Category I and approved by the Accreditation Council for Continuing Medical Education, the American Osteopathic Association, a state medical society, or an equivalent organization.

(15) Central axis of the beam--A line passing through the virtual source and the center of the plane figure formed by the edge of the first beam-limiting device.

(16) Certified x-ray systems--X-ray systems that have been certified in accordance with Title 21, Code of Federal Regulations (CFR).

(17) Certified radiologist--A physician certified by the American Board of Radiology, the American Osteopathic Board of Radiology, the Royal College of Physicians and Surgeons of Canada, or Le College des Medecins du Quebec.

(18) Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:
Figure: 25 TAC §289.227(e)(18)

(19) Collimator--A device or mechanism by which the x-ray beam is restricted in size.

(20) Computed tomography (CT)--The production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(21) Computed tomography dose index (CTDI)--CTDI represents the average absorbed dose along the z-axis from a series of contiguous irradiations. CTDI approximates the average central dose values associated with a spatially complex dose distribution in a reference acrylic phantom for one particular set of exam techniques. CTDI is defined exclusively for axial scanning.

(22) Control panel--The part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(23) CT conditions of operation--All selectable parameters governing the operation of a CT system including, but not limited to, nominal tomographic section thickness, filtration, and the technique factors as defined in this subsection.

(24) CT gantry--The tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames that hold these components.

(25) Cumulative air kerma (CAK)--The air kerma accumulated at a specific point in space relative to the fluoroscopic gantry during a procedure. CAK does not include tissue backscatter and is measured in Gy. Some manufacturers identify CAK as cumulative dose (CD).

(26) Diagnostic source assembly--The tube housing assembly with a beam-limiting device attached.

(27) Diagnostic x-ray system--An x-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

(28) Dose-area product (DAP)--Dose-area product is the integral of air kerma (absorbed dose to air) across the entire x-ray beam emitted from the x-ray tube. DAP is a surrogate measurement for the entire amount of energy delivered to the patient by the beam. DAP is measured in R x cm^2 (cGy x cm^2).

(29) Dose-length product (DLP)--DLP is the $CTDI_{vol}$ multiplied by the scan length (slice thickness x number of slices) in centimeters. It reflects the total energy absorbed attributable to the complete scan acquisition but is independent of what is actually scanned.

(30) Entrance exposure (Entrance air kerma)--The entrance exposure in air expressed in roentgens (R) or the entrance dose in air (air kerma) expressed in gray (Gy), measured at the point where the center of the useful beam enters the patient.

(31) Entrance exposure rate (air kerma rate)--The exposure (air kerma) per unit time at the point where the center of the useful beam enters the patient.

(32) Field emission equipment--Equipment that uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(33) Field size--The dimensions along the major axes of an area in a plane perpendicular to the central axis of the beam at the normal treatment or examination source-to-image distance and defined by the intersection of the major axes and the 50% isodose line.

(34) Filter--Material placed in the useful beam to preferentially absorb selected radiations.

(35) Fluoroscopic system--A system in which x-ray photons produce a fluoroscopic image. It includes the image receptors such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(36) Fluoroscopically-Guided Interventional (FGI) Procedures--An interventional diagnostic or therapeutic procedure performed via percutaneous or other access routes, usually with local anesthesia or intravenous sedation, which uses external ionizing radiation in the form of fluoroscopy to localize or characterize a lesion, diagnostic site, or treatment site, to monitor the procedure, and to control and document therapy. FGI procedures may include but not be limited to:

(A) TIPS creation (transjugular intrahepatic portosystemic shunt);

(B) Embolization (any location, any lesion);

(C) Stroke therapy;

(D) Biliary drainage;

(E) Angioplasty with or without stent placement;

(F) Stent-graft placement;

(G) Chemoembolization;

(H) Angiography and intervention for gastrointestinal hemorrhage;

(I) Carotid stent placement;

(J) RF (radiofrequency) cardiac ablation;

(K) Complex placement of cardiac EP (electrophysiology) devices; and

(L) PCI (percutaneous coronary intervention) (single or multiple vessel).

(37) Focal spot--The area projected on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

(38) General purpose x-ray system--Any x-ray system that is not limited by design to radiographic examinations of specific anatomical regions.

(39) Gonadal shield--A protective barrier for the testes or ovaries.

(40) Half-value layer (HVL)--The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate (air kerma rate) is reduced to one-half of its original value.

(41) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(42) Healing arts screening--The testing of asymptomatic human beings using radiation machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe such x-ray tests for the purpose of diagnosis or treatment.

(43) High level control for fluoroscopy--Any selected mode having an entrance exposure rate (air kerma rate) above 10 roentgens per minute (R/min) or (100 mGy/min). This mode shall meet the high level requirements in subsection (m)(3)(A)(i)(II), (ii)(II), or (iii)(II) of this section.

(44) Image intensifier--A device, installed in its housing that instantaneously converts an x-ray pattern into a corresponding light or digital image.

(45) Image receptor--Any device, such as a fluorescent screen or radiographic film that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(46) Irradiation--The exposure of matter to ionizing radiation.

(47) kV--Kilovolt.

(48) kVp--Kilovolt peak (See definition for peak tube potential).

(49) kWs--Kilowatt-second. It is equivalent to 10 E 3 watt-second, where 1 watt-second = 1 kV x 1 milliampere (mA) x 1 second.

(50) Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(51) Leakage radiation--Radiation emanating from the diagnostic source assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(52) Leakage technique factors--The technique factors associated with the diagnostic source assembly that is used in measuring leakage radiation. They are defined as follows:

(A) for diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs (10 milliampere-second (mAs)) or the minimum obtainable from the unit, whichever is larger;

(B) for diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential; or

(C) for all other diagnostic source assemblies, the maximum-rated peak tube potential and the continuous tube current for the maximum-rated peak tube potential.

(53) Licensed medical physicist--An individual holding a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, with a specialty in diagnostic medical physics.

(54) mA--Milliampere.

(55) mAs--Milliampere-second.

(56) Medical research--The investigation of various health risks and diseases.

(57) Mobile service operation--The provision of x-ray systems and personnel at temporary sites for limited time periods. The x-ray systems may be fixed inside a motorized vehicle or may be a radiation machine that may be removed from the vehicle and taken into a facility for use.

(58) Multiple slice tomogram system--A computed tomography x-ray system that obtain x-ray transmission data simultaneously during a single scan to produce more than one tomogram.

(59) Nominal tomographic section thickness--The full-width at half-maximum of the sensitivity profile taken at the center of the cross sectional volume over which x-ray transmission data are collected.

(60) Non-certified x-ray systems--X-ray systems manufactured and assembled prior to certification requirements of Title 21, CFR, effective as specified in Title 21, CFR, Part 1020.30(a).

(61) Patient--An individual subjected to healing arts examination, diagnosis, or treatment.

(62) Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during an exposure.

(63) Phantom--A volume of material behaving in a manner that can be related to tissue with respect to the attenuation and scattering of radiation.

(64) Phototimer--A method for controlling exposures to image receptors by the amount of radiation that reaches a radiation detection device. The radiation detection device is part of an electronic circuit that controls the duration of time the tube is activated (See definition for automatic exposure control).

(65) Physician--An individual licensed by the Texas Medical Board.

(66) Portable x-ray systems--X-ray systems that are mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable x-ray systems may also include x-ray systems designed to be hand-carried.

(67) Practitioner of the healing arts (practitioner)--A person licensed to practice healing arts by either the Texas Medical Board as a physician, the Texas Board of Chiropractic Examiners, or the Texas State Board of Podiatric Medical Examiners.

(68) Primary protective barrier--(See definition for protective barrier).

(69) Protective apron--An apron made of radiation attenuating materials used to reduce radiation exposure.

(70) Protective barrier--A barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(A) primary protective barrier--A barrier sufficient to attenuate the useful beam to the required degree.

(B) secondary protective barrier--A barrier sufficient to attenuate the stray radiation to the required degree.

(71) Protective glove--A glove made of radiation attenuating materials used to reduce radiation exposure.

(72) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(73) Radiation oncologist--A physician with a specialty in radiation therapy.

(74) Radiograph--An image receptor on which the image is created directly or indirectly by an x-ray exposure and results in a permanent record.

(75) Radiologist--A physician with a specialty in using ionizing and non-ionizing radiation for medical imaging and interpretation for diagnostic and treatment purposes.

(76) Reference level--The suggested levels at which a facility should review its methods and determine if acceptable image quality can be achieved at a lower radiation output level as determined by measurements taken from a selected phantom. The specific purpose of the reference level is to provide a benchmark for comparison of imaging equipment performance under prescribed conditions and is not intended to define a maximum or minimum exposure limit for any patient.

(77) Reference plane--A plane that is displaced from and parallel to the tomographic plane.

(78) Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58×10^{-4} C/kg of air.

(79) Scan--The complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

(80) Scan increment--The amount of relative displacement of the patient with respect to the CT system between successive scans measured along the direction of such displacement.

(81) Scan sequence--A preselected set of 2 or more scans performed consecutively under preselected CT conditions of operation.

(82) Scan time--The period of time between the beginning and end of x-ray transmission data accumulation for a single scan.

(83) Scattered radiation--Radiation that has been deviated in direction during passage through matter.

(84) Secondary protective barrier (See definition for protective barrier).

(85) Shutter--A device attached to the tube housing assembly that can totally intercept the useful beam and that has a lead equivalency not less than that of the tube housing assembly.

(86) Single tomogram system--CT system that obtains x-ray transmission data during a scan to produce a single tomogram.

(87) Source--The focal spot of the x-ray tube.

(88) Source-to-image receptor distance--The distance from the source to the center of the input surface of the image receptor.

(89) Source-to-skin distance (SSD)--The distance from the source to the skin of the patient.

(90) Special purpose x-ray system--Any x-ray system that is limited by design to radiographic examinations of specific anatomical regions. Special purpose x-ray systems include, but are not limited to, dedicated chest units, cystography units, and head and skull units.

(91) Special procedures--The application of special x-ray systems and specialized techniques to obtain required diagnostic information. Special procedures include, but are not limited to, angiography, cardiac catheterization, myelography, and surgery.

(92) Spot film--A radiograph that is made during a fluoroscopic examination to permanently record conditions that exist during that fluoroscopic procedure.

(93) Spot film device--A device intended to transport and/or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(94) Stationary x-ray system--A stationary x-ray system that is installed in a fixed location.

(95) Stray radiation--The sum of leakage and scattered radiation.

(96) Supervision--The delegating, by the practitioner, of the task of applying radiation to persons who perform tasks under the practitioner's control and who are certified under the Medical Radiologic Technologist Act, Texas Occupations Code, Chapter 601. The practitioner assumes full responsibility for these tasks and shall assure that the tasks will be administered correctly.

(97) Target--The part of a radiation machine head that by design intercepts a beam of accelerated particles with subsequent emission of other radiation.

(98) Technique chart--A chart that provides technical factors, anatomical examination, patient thickness for examination being performed, and source-to-image distance needed to make clinical radiographs when the radiographic system is in manual mode.

(99) Technique factors--The conditions of operation that are specified as follows:

(A) for capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(B) for field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses;

(C) for CT systems designed for pulsed operations, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(D) for CT systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds or the product of tube current and exposure time in mAs when the scan time and exposure time are equivalent; and

(E) for all other x-ray systems, peak tube potential in kV and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(100) Tomogram--The depiction of the x-ray attenuation properties of a section through the body.

(101) Tomographic plane--The geometric plane that is identified as corresponding to the output.

(102) Tomographic section--The volume of an object whose x-ray attenuation properties are imaged in a tomogram.

(103) Traceable to a national standard--This indicates that a quantity or a measurement has been compared to a national standard, for example, the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(104) Tube--An x-ray tube, unless otherwise specified.

(105) Tube housing assembly--The tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(106) Useful beam--Radiation that passes through the window, aperture, cone, or other collimating device of the source housing. Also referred to as the primary beam.

(107) X-ray control panel--A device that controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices that control the technique factors of an x-ray exposure.

(108) X-ray field--That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate (air kerma rate) is 1/4th of the maximum in the intersection.

(109) X-ray high-voltage generator--A device that transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tubes, high-voltage switches, electrical protective devices, and other appropriate elements.

(110) X-ray system--An assemblage of components for the controlled production of x-rays and include a radiation machine. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

(111) X-ray tube--Any electron tube that is designed to be used primarily for the production of x rays.

(f) Morgues, forensic medicine, and educational facilities.

(1) Morgues shall comply with the following requirements:

(A) subsection (b)(1) and (2) of this section concerning scope;

(B) subsection (c) of this section concerning prohibitions;

(C) subsection (e) of this section concerning definitions, as applicable;

(D) subsection (i)(2) of this section concerning operating and safety procedures;

(E) subsection (i)(4) of this section concerning protective devices;

(F) subsection (i)(11) of this section concerning holding of tube;

(G) subsection (k)(1) of this section concerning warning labels;

(H) subsection (m)(1)(A) of this section concerning fluoroscopy; and

(I) subsection (s)(1)(A) - (I), and (R) of this section concerning records.

(2) Facilities conducting training using non-humans shall comply with all the requirements of this section except for the following:

(A) subsection (i)(5) of this section concerning operator credentialing;

(B) subsection (j) of this section concerning radiographic entrance exposure (air kerma) limits;

(C) subsections (p), (q) and (r) of this section concerning film processing; and

(D) subsection (o) of this section concerning equipment performance evaluation.

(g) Requirements for bone densitometers. Bone densitometers shall be exempt from this chapter except for the following:

(1) §289.203 of this title, §289.204 of this title, §289.205 of this title, §289.226 of this title, and §289.231 of this title;

(2) healing arts screening and medical research in accordance with §289.226(h) and (t) of this title;

(3) purpose and scope in accordance with subsections (a) and (b) of this section;

(4) prohibitions in accordance with subsection (c)(1) and (2) of this section;

(5) definitions in accordance with subsection (e) of this section, as applicable;

(6) operating and safety procedures in accordance with subsection (i)(2) of this section;

(7) operator training in accordance with §140.521 of this title (relating to Bone Densitometry Training);

(8) gonadal shielding in accordance with subsection (i)(13) of this section;

(9) warning labels in accordance with §289.231(z) of this title.

(10) record requirements for authorized use locations and authorized records locations for mobile services in accordance with subsection (s)(1)(A) - (D), (G), (J), (R), and (s)(2) of this section; and

(11) record requirements for mobile services in accordance with subsection (s)(1)(A), (D), (H), and (J) of this section. These records shall be maintained with the bone densitometer authorized to be used for mobile services.

(h) Certified x-ray systems. In addition to the requirements of this chapter, the registrant shall not make, nor cause to be made, any modification of components or installations of components certified in accordance with the United States Food and Drug Administration (FDA) Title 21, CFR, Part 1020, "Performance Standards for Ionizing Radiation Emitting Products," as amended, in any manner that could cause the installations or the components to fail to meet the requirements of the applicable parts of the standards specified in Title

21, CFR, Part 1020, except where a variance has been granted by the Director, Center for Devices and Radiological Health, FDA. A copy of the variance shall be maintained by the registrant in accordance with subsection (s)(1) of this section for inspection by the agency.

(i) General operating requirements.

(1) Technique chart. A technique chart relevant to the particular radiation machine shall be provided or electronically displayed in the vicinity of the control panel and used by all operators.

(2) Operating and safety procedures.

(A) Each registrant shall have and implement written operating and safety procedures. The procedures shall include, but are not limited to, the following as applicable:

(i) posting notices to workers in accordance with §289.203(b) of this title;

(ii) instructions to workers in accordance with §289.203(c) of this title;

(iii) notifications and reports to individuals in accordance with §289.203(d) of this title;

(iv) ordering x-ray exams in accordance with §289.231(b)(1) of this title;

(v) occupational dose requirements in accordance with §289.231(m) of this title;

(vi) personnel monitoring requirements in accordance with §289.231(n), (q), and (s) of this title;

(vii) posting of a radiation area in accordance with §289.231(x) of this title;

(viii) use of a technique chart in accordance with paragraph (1) of this subsection;

(ix) use of protective devices in accordance with paragraph (4) of this subsection;

(x) credentialing requirements for individuals operating radiation machines in accordance with paragraph (5) of this subsection;

(xi) exposure of individuals other than the patient in accordance with paragraph (7) of this subsection;

(xii) holding of patients or image receptors in accordance with the following;

(I) a list of circumstances in which mechanical holding devices cannot be routinely utilized; and

(II) a procedure used for selecting an individual to hold or support the patient or image receptor.

(xiii) gonadal shielding in accordance with paragraph (13) of this subsection;

(xiv) control of scattered radiation in accordance with subsection (m)(8) of this section; and

(xv) film processing program or digital image processing protocols in accordance with subsections (p), (q), and (r) of this section.

(B) The registrant shall maintain the operating and safety procedures in accordance with subsection (s)(1) of this section for inspection by the agency.

(C) The procedures shall be made available to each individual operating a radiation machine, including any restrictions of the operating technique required for the safe operation of the particular x-ray system.

(D) The registrant shall document that each individual operating a radiation machine has read the operating and safety procedures at least annually and shall maintain this documentation for inspection by the agency. The documentation shall include the following:

(i) name and signature of individual;

(ii) date individual read the operating and safety procedures; and

(iii) initials of the RSO.

(3) Occupational dose limits and personnel monitoring. Except as otherwise exempted, all individuals who are associated with the operation of a radiation machine are subject to the occupational dose limits of §289.231(m) of this title regarding dose limits to individuals, and the personnel monitoring requirements of §289.231(n) of this title.

(4) Protective devices. Protective devices shall be utilized when required, as in paragraphs (8)(B) and (C), (10), and (13) of this subsection, and subsection (m)(8) of this section.

(A) Protective devices shall be of no less than 0.25 millimeter (mm) lead equivalent material except as specified in paragraph (13) of this subsection and subsection (m)(8)(B)(i) of this section.

(B) Protective devices, including aprons, gloves, and shields shall be checked annually for defects such as holes, cracks, and tears. These checks may be performed by the registrant by visual or tactile means, or x-ray imaging. If a defect is found, protective devices shall be replaced or removed from service until repaired. A record of this test shall be made and maintained by the registrant in accordance with subsection (s)(1) of this section for inspection by the agency.

(5) Operator credentialing. Individuals who operate radiation machines for human use shall meet the appropriate credentialing requirements of rules issued in accordance with the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601. Copies of the credentialing document shall be maintained at the location(s) where the individual is working.

(6) Practice of medical physics. Surveys, tests, or evaluations required by this section may constitute the practice of medical physics and, therefore, require a license from the Texas Board of Licensure for Professional Medical Physicists in accordance with the Medical Physics Practice Act, Texas Occupations Code, Chapter 602.

(7) Exposure of individuals other than the patient. No individual other than a patient, operator, and ancillary personnel shall be in the x-ray room or area while exposures are being made unless such individual's assistance is required.

(8) Holding of patient or image receptor.

(A) When a patient or image receptor must be held in position during radiography, mechanical supporting or restraining devices shall be used when the exam permits.

(B) If a patient or image receptor must be held by an individual during an exposure, that individual shall be protected with appropriate shielding devices described in paragraph (4) of this subsection.

(C) In those cases where the patient must hold the image receptor, any portion of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.25 mm lead equivalent material.

(9) Viewing system and contact with patient.

(A) Windows, mirrors, closed circuit television, or another method shall be provided to permit the operator to continuously observe the patient during irradiation.

(B) The operator shall be able to maintain verbal, visual, and aural contact with the patient.

(10) Operator position. The operator position during the exposure shall be such that the operator's exposure is as low as reasonably achievable (ALARA) and the operator is a minimum of 6 feet from the source of radiation or protected by an apron, gloves, or other shielding having a minimum of 0.25 mm lead equivalent material.

(11) Holding of tube. In no case shall an individual hold the tube or tube housing assembly supports during any radiographic exposure.

(12) Patient protection. Notwithstanding the provisions of paragraph (7) of this subsection, other patients who are in line with the primary beam and who cannot be removed from the room shall be protected by whole body protective barriers of a minimum of 0.25 mm lead equivalent material or so positioned that the nearest portion of their body is at least 6 feet from both the tube head and the nearest edge of the image receptor.

(13) Gonadal shielding. Gonadal shielding shall be used on patients when the gonads are in or within 5 cm of the useful beam. This requirement does not apply if the shielding will interfere with the diagnostic procedure. Gonadal shielding shall be of at least 0.5 mm lead equivalent material.

(14) Measurements of the radiation output for x-ray, fluoroscopic, and CT systems. Measurements of the radiation output of x-ray, fluoroscopic, and CT systems shall be performed with a calibrated dosimetry system in accordance with the following.

(A) The dosimetry system calibration shall be traceable to a national standard.

(B) Dosimetry systems shall be calibrated within 24 months from the date of the prior calibration.

(C) Measurements of radiation output shall be performed with a dosimetry system that has been calibrated within the 24 months preceding the date of the measurement.

(D) Record of the dosimetry system calibration shall include:

(i) manufacturer's name, model and serial number of each calibrated instrument;

(ii) date of the calibration; and

(iii) name of the individual recording the information.

(E) The registrant shall record the dosimetry system calibration information specified in subparagraph (D)(i) - (iii) of this paragraph and maintain that record in accordance with subsection (s)(1) of this section for inspection by the agency.

(j) Radiographic entrance exposure (air kerma) limits. The in-air exposure (air kerma) determined for the technique used by the registrant for the specified average human adult patient thickness for medical radiography shall not exceed the entrance exposure (air kerma) limits in the following Table I.
Figure: 25 TAC §289.227(j)

(k) Machine requirements for general x-ray and fluoroscopic systems.

(1) Warning label. The warning label will meet the requirements of §289.231(z) of this title.

(2) Mechanical support of tube head. The tube housing assembly shall be adjusted to remain stable during an exposure unless tube housing movement is a designed function of the x-ray system.

(3) Battery charge indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(4) Beam quality. The following requirements apply to beam quality.

(A) Half-value layer.

(i) The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following Table II. If it is necessary to determine such half-value layer at an x-ray tube potential that is not listed in Table II, linear interpolation may be made.
Figure: 25 TAC §289.227(k)(4)(A)(i)

(ii) For capacitor energy storage equipment, compliance with the requirements of this paragraph shall be determined with the maximum quantity of charge per exposure.

(B) Filtration controls.

(i) For x-ray systems that have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filters and shall prevent an exposure unless the minimum amount of filtration required by subparagraph (A) of this paragraph is in the useful beam for the given kVp that has been selected.

(ii) Any other system having removable filters shall be required to have the minimum amount of filtration as required by subparagraph (A)(i) of this paragraph permanently located in the useful beam during each exposure.

(5) Multiple tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes that have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly that has been selected.

(6) Technique and exposure indicators.

(A) The technique factors to be used during an exposure shall be indicated before the exposure begins except when automatic exposure controls are used, in which case the technique factors that are set prior to the exposure shall be indicated.

(B) On x-ray systems having fixed technique factors, the requirement of subparagraph (A) of this paragraph may be met by permanent markings.

(C) The x-ray control panel shall provide visual indication of the production of x-rays.

(D) The indicated technique factors shall be accurate to meet manufacturer's specifications. If these specifications are not available from the manufacturer, the factors shall be accurate to within plus or minus 10% of the indicated setting.

(7) X-ray control. An x-ray control shall be incorporated into each x-ray system such that an exposure can be terminated by the operator at any time except for an exposure of 0.5 seconds or less or during serial radiography when means shall be provided to permit completion of any single exposure of the series in process.

(l) Additional machine requirements for x-ray systems. This subsection does not apply to fluoroscopic or CT systems.

(1) Beam limitation. Beam limitation shall be as follows.

(A) Stationary general purpose x-ray systems.

(i) Beam-limiting devices shall restrict the useful beam to the area of clinical interest as follows:

(I) the misalignment of the x-ray field for a manual rectangular collimator shall be within plus or minus 2.0% of the SID for the length or width of the image receptor;

(II) the x-ray field for a circular or polygon collimator shall not exceed the diagonal of the image receptor by more than 2.0% of the SID; or

(III) the misalignment of the x-ray field for an automatic or semi-automatic collimator shall be within plus or minus 3.0% of the SID for the length and width of the image receptor and shall be within plus or minus 4.0% of the SID, without regard to the sign, of the sum of the difference of the length and width of the image receptor.

(ii) If the area of clinical interest is smaller than the image receptor, the operator of the x-ray system shall use all beam limiting devices necessary to restrict the useful beam to the clinical area of interest.

(iii) A method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges, either the length or width, of the x-ray field shall not exceed 2.0% of the SID.

(iv) A numerical SID indicator shall be present and shall be accurate to within plus or minus 2.0% of the SID.

(v) The system shall indicate when the axis of the x-ray field is perpendicular to the plane of the image receptor.

(vi) The center of the x-ray field, when perpendicular to the image receptor, shall be accurate to within plus or minus 2.0% of the SID with respect to the center of the image receptor.

(vii) The beam-limiting device shall numerically indicate the field size in the plane of the image receptor.

(viii) Indication of field size dimensions and SIDs shall be specified in inches and/or centimeters.

(ix) The field size indicated on the beam-limiting device shall be within plus or minus 2.0% of the SID along the width and length, separately, of the actual x-ray field size.

(B) Portable x-ray systems. Portable x-ray systems shall comply with the requirements in subparagraph (A) of this paragraph, as applicable, based on manufacturer's design.

(C) X-ray systems designed for one image receptor size. X-ray systems designed for only one image receptor size at a fixed SID shall provide a means to do the following:

(i) limit the x-ray field to no greater than the dimensions of the image receptor at the SID, and to align the center of the x-ray field with the center of the image receptor to within plus or minus 2.0% of the SID center; or

(ii) align the x-ray field such that the x-ray field does not extend beyond any edge of the image receptor at the SID.

(D) Special purpose x-ray systems.

(i) When the x-ray beam is perpendicular to the plane of the image receptor, a means shall be provided to do the following:

(I) limit the x-ray field such that the x-ray field does not exceed each dimension of the image receptor by more than 2.0% of the SID; and

(II) align the center of the x-ray field with the center of the image receptor to within plus or minus 2.0% of the SID.

(ii) The requirements of clause (i) of this subparagraph may be met with a system that meets the requirements for a general purpose x-ray system as specified in subparagraph (A)(i) - (iv) of this paragraph or, when alignment means are also provided, may be met with either of the following:

(I) an assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed with each such device having clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(II) a beam-limiting device having multiple fixed apertures sufficient to meet the requirement for each combination of image receptor size and SID for which the radiation machine is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

(2) Radiation exposure control devices. Radiation exposure control devices shall include the following:

(A) Timers. Means shall be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(B) AEC. When AEC is provided, the following shall occur.

(i) Indication shall be made on the control panel when AEC mode of operation is selected.

(ii) If the x-ray tube potential is equal to or greater than 50 kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to 2 pulses.

(iii) The minimum exposure time for all x-ray systems other than that specified in clause (ii) of this subparagraph shall be equal to or less than 0.0167 second or a time interval required to deliver 5 mAs, whichever is greater.

(iv) A visible and/or audible signal shall indicate when an exposure has been terminated.

(C) Exposure interval reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure interval for both manual and AEC systems shall not exceed 0.05. This requirement applies to clinically used techniques.

(3) SSD. All portable x-ray systems shall be provided with means to limit the SSD to equal to or greater than 30 cm.

(4) Exposure reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure for both manual and AEC systems shall not exceed 0.05. This requirement applies to clinically used techniques.

(5) Linearity. The average ratios of exposure (air kerma) mR/mGy to the indicated mAs product obtained at any 2 consecutive mA or mAs settings shall not differ by more than 0.10 times their sum, where X_1 and X_2 are the average mR/mAs (mGy/mAs) values obtained at each of 2 consecutive tube current settings:
Figure: 25 TAC §289.227(l)(5)

(6) Radiation from capacitor. Radiation from capacitor energy storage equipment in standby status. Radiation emitted from the x-ray tube when the exposure switch or timer is not activated shall not exceed a rate of 2 milliroentgens per hour (mR/hr) or 0.02 milligray per hour (mGy/hr) at 5 cm from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

(7) X-ray systems needing correction or repair. In order to achieve compliance with this chapter, the correction or repair shall begin within 30 days following the failure and shall be performed according to a plan designated by the registrant. Correction or repair shall be completed no longer than 90 days from discovery unless authorized by the agency.

(8) Records of an x-ray system corrections or repairs. The registrant shall maintain records of corrections or repairs and any tests, measurements or numerical readings listed in subsection (o)(6) of this section in accordance with subsection (s)(1) of this section for inspection by the agency.

(m) Fluoroscopic systems and spot-film devices for all facilities.

(1) Limitation of the useful beam. Limitation of the useful beam shall be as follows.

(A) Primary barrier.

(i) The fluoroscopic imaging assembly shall be provided with a primary protective barrier that intercepts the entire cross section of the useful beam at any SID.

(ii) The x-ray tube used for fluoroscopy shall not produce x-rays unless the barrier is in position to intercept the useful beam and the imaging device is in place and operable.

(iii) The exposure rate (air kerma rate) due to transmission through the barrier with the attenuation block in the useful beam, combined with radiation through the image intensifier if provided, shall not exceed 3.34×10^{-3}% of the entrance exposure rate (air kerma rate) at a distance of 10 cm from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor.

(B) Measuring compliance of barrier transmission.

(i) The exposure rate (air kerma rate) due to transmission through the primary protective barrier combined with radiation through the image intensifier shall be determined by measurements averaged over an area of 100 cm^2 with no linear dimension greater than 20 cm.

(ii) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 cm above the tabletop.

(iii) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 cm.

(iv) Movable grids and compression devices shall be removed from the useful beam during the measurement.

(v) The attenuation block shall be positioned in the useful beam 10 cm from the point of measurement of entrance exposure rate (air kerma rate) and between this point and the input surface of the fluoroscopic imaging assembly.

(vi) The collimator shall be fully open when the measurement is made.

(C) X-ray field.

(i) Compliance with clauses (ii) - (vi) of this subparagraph shall be determined with the beam axis perpendicular to the plane of the image receptor.

(ii) Fluoroscopic systems with a fixed SID and the capability of a visible area of no greater than 300 cm^2 shall be provided with either stepless adjustment of the x-ray field or a means to further limit the x-ray field at the image receptor to 125 cm^2 or less. If the equipment is provided with stepless adjustment, the minimum x-ray field size at the maximum SID shall be less than or equal to 5 cm by 5 cm at the image receptor.

(iii) Fluoroscopic systems with a variable SID or a fixed SID with the capability of a visible area of greater than 300 cm^2 shall be provided with stepless adjustment of the field size. The minimum x-ray field size at the maximum SID shall be less than or equal to 5 cm by 5 cm at the image receptor.

(iv) Neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3.0% of the SID. The sum of the excess length and the excess width shall be no greater than 4.0% of the SID.

(v) For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field that pass through the center of the visible area of the image receptor.

(vi) For fluoroscopic systems with only a manual mode of collimation, the x-ray field produced shall be limited to the area of the spot-film cassette at 16 inches above tabletop. Additionally, during fluoroscopy, the beam shall be restricted to the area of the input phosphor.

(vii) Spot-film devices shall meet the following additional requirements.

(I) Means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the film to the size of that portion of the film that has been selected on the spot-film selector.

(-a-) Such adjustment shall be automatically accomplished except when the x-ray field size in the plane of the film is smaller than that of the selected portion of the film.

(-b-) The total misalignment of the edges of the x-ray field with the respective edges of the selected portion of the image receptor along the length or width dimensions of the x-ray field in the plane of the image receptor shall not exceed 3.0% of the SID when adjusted for full coverage of the selected portion of the image receptor.

(-c-) The sum, without regard to sign of the misalignment along any two orthogonal dimensions, shall not exceed 4.0% of the SID.

(II) The center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within plus or minus 2.0% of the SID.

(2) Activation of the fluoroscopic tube. X-ray production in the fluoroscopic mode shall be controlled by a device that requires continuous pressure by the fluoroscopist for the entire time of the ex-

posure (continuous pressure type switch). When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposures at any time, but means may be provided to permit completion of any single exposure of the series in process.

(3) Entrance exposure rate (air kerma rate) allowable limits for fluoroscopic systems.

(A) The following requirements apply to fluoroscopic systems manufactured prior to May 19, 1995.

(i) Fluoroscopic systems with AERC. Fluoroscopic systems that are provided with AERC shall not be operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) in excess of 2.58 x 10^{-3} coulomb per kilogram per minute (C/kg/min) (10 roentgens per minute (10 R/min) or (100 mGy/min) at the point where the center of the useful beam enters the patient, except:

(I) during recording of fluoroscopic images, excluding last image hold; or

(II) when an optional high-level control is provided. When so provided, the fluoroscopic system shall not be operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) in excess of 1.29 x 10^{-3} C/kg/min (5 R/min or 50 mGy/min) at the point where the center of the useful beam enters the patient, unless the high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(ii) Fluoroscopic systems without AERC (manual mode). Fluoroscopic systems that are not provided with AERC shall not be operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) in excess of 1.29 x 10^{-3} C/kg/min (5 R/min or 50 mGy/min) at the point where the center of the useful beam enters the patient, except:

(I) during recording of fluoroscopic images, excluding last image hold; or

(II) when an optional high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(iii) Fluoroscopic systems with both an AERC mode and a manual mode. Fluoroscopic systems that are provided with both an AERC mode and a manual mode shall not be operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) in excess of 2.58 x 10^{-3} C/kg/min (10 R/min or 100 mGy/min) in either mode at the point where the center of the useful beam enters the patient except:

(I) during recording of fluoroscopic images, excluding last image hold; or

(II) when the mode or modes have an optional high-level control, in which case that mode or modes shall not be operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) in excess of 1.29 x 10^{-3} C/kg/min (5 R/min or 50 mGy/min) at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high-level control shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level is being employed.

(iv) Measuring compliance. Compliance of entrance exposure rate (air-kerma rate) for fluoroscopic systems shall be determined as follows.

(I) If the source is below the x-ray table, the exposure rate (air kerma rate) shall be measured at 1 cm above the tabletop or cradle.

(II) If the source is above the x-ray table, the exposure rate (air kerma rate) shall be measured at 30 cm above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement.

(III) In a C-arm fluoroscopic system, the exposure rate (air kerma rate) shall be measured at 30 cm from the input surface of the fluoroscopic imaging assembly provided that the end of the beam-limiting device or spacer is no closer than 30 cm from the input surface of the fluoroscopic imaging assembly. The applicable limit shall not be exceeded at any available SID.

(IV) In a lateral (horizontal) fluoroscopic system, the exposure rate (air kerma rate) shall be measured at a point 15 cm from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the table top is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 cm to the centerline of the x-ray table.

(B) The following requirements apply to fluoroscopic systems manufactured on or after May 19, 1995.

(i) Fluoroscopic systems operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) greater than 1.29 x 10^{-3} C/kg/min (5 R/min or 50 mGy/min) at the point where the center of the useful beam enters the patient shall be equipped with AERC. Provision for manual selection of technique factors may be provided.

(ii) Fluoroscopic systems shall not be operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) in excess of 2.58 x 10^{-3} C/kg/min (10 R/min or 100 mGy/min) at the point where the center of the useful beam enters the patient except:

(I) for fluoroscopic systems manufactured prior to June 10, 2006, during the recording of images from an x-ray image-intensifier tube using photographic film or a video camera when the x-ray source is operated in a pulsed mode;

(II) for fluoroscopic systems manufactured on and after June 10, 2006, during the recording of images from the x-ray image-intensifier to provide the user with a recorded image(s) after termination of the exposure. Such recording does not include images resulting from a last-image-hold feature that are not recorded; and

(III) when the high-level control is activated, the fluoroscopic system shall not be operable at any combination of tube potential and current that will result in an exposure rate (air kerma rate) in excess of 5.16 x 10^{-3} C/kg/min (20 R/min or 200 mGy/min) at the point where the center of the useful beam enters the patient. Special means of activation of high-level controls shall be required. The high-level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(iii) Measuring compliance of entrance exposure rate (air-kerma rate) for fluoroscopic systems shall be determined as follows.

(I) If the source is below the x-ray table, the exposure rate (air kerma rate) shall be measured at 1 cm above the tabletop or cradle.

(II) If the source is above the x-ray table, the exposure rate (air kerma rate) shall be measured at 30 cm above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement.

(III) In a C-arm fluoroscopic system, the exposure rate (air kerma rate) shall be measured at 30 cm from the input surface of the fluoroscopic imaging assembly provided that the end of the beam-limiting device or spacer is no closer than 30 cm from the input surface of the fluoroscopic imaging assembly. The applicable limit shall not be exceeded at any available SID.

(IV) In a lateral (horizontal) fluoroscopic system, the exposure rate (air kerma rate) shall be measured at a point 15 cm from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the table top is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 cm to the centerline of the x-ray table.

(C) For hand-held fluoroscopic systems, the exposure rate (air kerma rate) shall be measured at the point closest to the source.

(D) Periodic measurement of entrance exposure rate (air kerma rate) for fluoroscopic systems shall be performed as follows by a licensed medical physicist.

(i) Such measurements shall be made within 30 days of installation and within 30 days after any maintenance of the system that might affect the exposure rate. Thereafter, the measurements shall be made annually or at intervals not to exceed 14 months from the date of the prior measurements.

(ii) Results of these measurements shall be posted where any fluoroscopist may have ready access to such results while using the fluoroscopic system and maintained in accordance with subsection (s)(1) of this section for inspection by the agency. The measurement results shall be stated in R/min or mGy/min and include the technique factors used in determining such results. The name of the person performing the measurements and the date the measurements were performed shall be included in the results.

(iii) Conditions of periodic measurement of entrance exposure rate (air kerma rate) are as follows.

(I) The measurement shall be made in accordance with subparagraph (A)(iv) or (B)(iii) of this paragraph, as applicable.

(II) Fluoroscopic systems that do not incorporate an AERC shall utilize a milliamperage and kVp typical of the clinical use of the fluoroscopic system. Materials should be placed in the useful beam between the detection and imaging systems when conducting these periodic measurements to protect the imaging system.

(III) Fluoroscopic systems that do incorporate an AERC shall have sufficient material placed in the useful beam to produce a milliamperage and kVp typical of the clinical use of the fluoroscopic system.

(4) Measurements of the output rate for fluoroscopic systems. Measurements of the output rate of the fluoroscopic system shall be performed with a calibrated dosimetry system in accordance with subsection (i)(14) of this section.

(5) Indication of potential and current. During fluoroscopy and cinefluorography, the kV and the mA shall be continuously indicated at the control panel and/or the fluoroscopist's position.

(6) Source-to-skin distance (SSD).

(A) Means shall be provided to limit the SSD to the following:

(i) not less than 38 cm on stationary fluoroscopic systems; and

(ii) not less than 30 cm on portable fluoroscopic systems.

(B) For image-intensified fluoroscopic systems intended for specific surgical application that would be prohibited at the SSDs specified in subparagraph (A) of this paragraph, provisions may be made for operation at shorter SSDs, but in no case less than 20 cm.

(C) For stationary or portable C-arm fluoroscopic systems manufactured on or after June 10, 2006, having a maximum source-to-image receptor distance of less than 45 cm, the following requirements shall be met.

(i) Means shall be provided to limit the SSD to not less than 19 cm.

(ii) Such systems will be labeled and used for extremity use only.

(iii) For those systems intended for specific surgical applications that would be prohibited at the SSD specified in clause (i) of this subparagraph, provisions may be made for operation at a shorter SSD, but in no case less than 10 cm.

(D) The registrant's written operating and safety procedures shall provide precautionary measures to be adhered to during the use of the shorter SSD, in accordance with manufacturer's precautions, if provided.

(E) The SSD shall not be less than the FDA approved variance for a specific manufacturer of a hand-held fluoroscope.

(7) Fluoroscopic system timer and display.

(A) Fluoroscopic systems manufactured prior to June 10, 2006 shall comply with the following requirements.

(i) Means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting.

(ii) A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while x rays are produced until the timing device is reset. In lieu of such signal, the timer shall terminate the beam after the preset cumulative on-time is completed.

(B) Fluoroscopic systems manufactured on or after June 10, 2006 shall meet the following requirements.

(i) A display of the irradiation time visible to the fluoroscopist shall meet the following requirements.

(I) When the x-ray tube is activated, the fluoroscopic irradiation time in minutes and tenths of minutes shall be continuously displayed and updated at least every 6 seconds.

(II) The fluoroscopic irradiation time shall also be displayed within 6 seconds of termination of an exposure, and remain displayed until reset.

(ii) Means shall be provided to display the last-image-hold (LIH) image following the termination of the fluoroscopic exposure.

(iii) A display of the exposure rate (air kerma rate) as well as the cumulative exposure (cumulative air kerma) shall be displayed at the fluoroscopist's working position and shall meet the following requirements.

(I) The display of the exposure rate (air kerma rate) shall be clearly distinguishable from the cumulative exposure (cumulative air kerma).

(II) Means shall be provided to reset to zero the display of cumulative exposure (cumulative air kerma) prior to the beginning of a new examination or procedure.

(iv) A signal audible to the fluoroscopist shall sound for each passage of 5 minutes of irradiation time during an examination or procedure. The signal shall sound until manually reset, or if automatically reset, for at least 2 seconds.

(8) Control of scattered radiation.

(A) Fluoroscopic system configuration, including fluoroscopic table designs, shall not permit any portion of any individual's body, except the head, neck, and extremities, to be exposed to scattered radiation emanating from above or below the tabletop unless the radiation has passed through not less than a total of 0.25 mm lead equivalent material. The material may be, but is not limited to, drapes, self-supporting curtains, or viewing shields, in addition to any lead equivalency provided by a protective apron.

(B) Where sterile fields or special procedures prohibit the use of normal protective barriers or drapes, all of the following conditions shall be met.

(i) All persons, except the patient, in the room where fluoroscopy is performed shall wear protective aprons that provide a shielding equivalent of 0.35 mm of lead.

(ii) The fluoroscopic field size shall be reduced to the absolute minimum required for the procedure being performed (area of clinical interest).

(iii) Operating and safety procedures shall reflect the above conditions, and fluoroscopy personnel shall exhibit awareness of situations requiring the use and/or nonuse of the protective drapes.

(C) For image-intensified fluoroscopic systems with only a manual mode of collimation, the x-ray field produced shall be limited to the area of the spot-film cassette at 16 inches above tabletop. Additionally, during fluoroscopy, the beam shall be restricted to the area of the input phosphor.

(9) Radiation protocol committee (RPC) for fluoroscopically-guided interventional (FGI) procedures.

(A) Development of a RPC.

(i) Each registrant utilizing FGI procedures shall develop a RPC in accordance with the following.

(I) The registrant may establish a system-wide committee if the registrant has more than one site.

(II) One or more registrant may form a cooperative RPC as long as each facility has a representative on the committee.

(III) If the registrant has already established a radiation safety committee, the requirements of this subsection may be delegated to that committee if the members meet the requirements of subparagraph (B) of this paragraph.

(IV) The committee shall meet as often as necessary to conduct business but no less than once every 14 months.

(V) Interim meetings may be conducted by electronic means.

(ii) The registrant shall make a record of each RPC meeting to include the date, names of individuals in attendance, minutes of the meeting, and any actions taken. The registrant shall maintain the record in accordance with subsection (s)(1) of this section for inspection by the agency.

(B) Members required for the RPC. Members shall include but not be limited to the following individuals:

(i) a licensed physician of the healing arts who meets the requirements in subparagraph (E) of this paragraph;

(ii) a licensed medical physicist;

(iii) the RSO; and

(iv) other individuals as deemed necessary by the registrant.

(C) Establish and implement FGI procedure protocols.

(i) The RPC shall establish and implement written protocols, or protocols documented in an electronic report system, that include but are not limited to the following.

(I) A restriction of the use of fluoroscopic systems for interventional purposes to radiologists, radiation oncologists, physicians, as well as individuals to whom a physician has delegated authority pursuant to the Occupations Code, Chapter 601, and the applicable rules of the Texas Medical Board, who have completed the radiation safety awareness training as required in subparagraph (E) of this paragraph.

(II) A method to be used to monitor the radiation exposure.

(III) A recommended reference level for FGI procedures performed.

(IV) Actions to be taken for cases when the reference level was exceeded which may include patient follow-up.

(V) A review of the established protocol at an interval not to exceed 14 months.

(ii) The registrant shall make and maintain a record of each RPC protocol in accordance with subsection (s)(1) of this section for inspection by the agency. If the RPC revises a protocol, the registrant shall maintain the previous documentation after the revision in accordance with subsection (s)(1) of this section for inspection by the agency.

(D) Procedures for maintaining records.

(i) The registrant shall make and maintain a record of radiation output information so the radiation dose to the skin may be estimated in accordance with established protocols. The record shall include the following:

(I) patient identification;

(II) type and date of examination;

(III) identification of the fluoroscopic system used; and

(IV) cumulative air kerma or dose area product used if the information is available on the fluoroscopic system.

(ii) If the cumulative air kerma or dose area product are not displayed on the fluoroscopic system, records shall include other information necessary to estimate the radiation dose to the skin in accordance with established protocol or the following as necessary:

(I) fluoroscopic mode, such as, high-level or pulsed mode of operation;

(II) cumulative fluoroscopic exposure time; and

(III) number of films or recorded exposures.

(iii) The registrant shall maintain records required by this subparagraph in accordance with record retention policies of the facility.

(E) Radiation safety awareness training. Physicians, other than radiologists and radiation oncologists, as well as individuals to whom a physician has delegated authority pursuant to the Occupations Code, Chapter 601, and the applicable rules of the Texas Medical Board, shall complete a minimum of 8 hours of Category 1 CMEU in radiation safety awareness training prior to performing FGI procedures.

(i) The radiation safety awareness training shall include, but not be limited to the following topics:

(I) principles of radiation protection;

(II) biological effects of x-ray radiation;

(III) principles of fluoroscopic systems;

(IV) operation of fluoroscopic systems used for interventional purposes;

(V) fluoroscopic exposure (air kerma) outputs;

(VI) high level control options;

(VII) dose reduction techniques; and

(VIII) procedures for recording pertinent data specified in subparagraph (D) of this paragraph.

(ii) In addition to the 8-hour Category 1 CMEU as required in this subparagraph, the radiation safety awareness training shall:

(I) include a minimum of 1 hour fluoroscopic machine training demonstrating application of clause (i)(I), and (IV) - (VII) of this subparagraph; and

(II) be provided by a radiologist, licensed medical physicist, or a physician that meets the requirements of this subparagraph.

(iii) The registrant shall ensure that radiation safety awareness training be completed within 2 years from the effective date of this rule for each physician, "as well as individuals to whom a physician has delegated authority pursuant to the Occupations Code, Chapter 601, and the applicable rules of the Texas Medical Board," performing FGI procedures.

(iv) Two years after the effective date of this rule, the registrant shall ensure that prior to performing FGI procedures each physician, "as well as individuals to whom a physician has delegated authority pursuant to the Occupations Code, Chapter 601, and the applicable rules of the Texas Medical Board," shall complete the radiation safety awareness training.

(v) The 8 hours of Category 1 CMEU in radiation safety awareness training required by this subsection may be obtained by web-based online training.

(vi) The registrant shall maintain radiation safety awareness training records for the 8 hours Category 1 CMEU and the 1 hour fluoroscopic machine training required in this subparagraph in accordance with subsection (s)(1) of this section for inspection by the agency.

(n) CT systems.

(1) CT system requirements shall include the following.

(A) Warning label. The warning label will meet the requirements of §289.231(z) of this title.

(B) Visual indication. The CT control panel shall provide visual indication of the production of x-rays.

(C) Indicated technique factors. The indicated technique factors shall be accurate to meet manufacturer's specifications. If these specifications are not available from the manufacturer, the factors shall be accurate to within plus or minus 10% of the indicated setting.

(D) Tomographic plane indication and alignment.

(i) For any single tomogram system, means shall be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(ii) For any multiple slice tomogram system, means shall be provided to permit visual determination of the location of a reference plane. The reference plane can be offset from the location of the tomographic planes.

(iii) If a device using a light source is used to satisfy the requirements of clause (i) or (ii) of this subparagraph, the light source shall provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(E) Indication of CT conditions of operation. The CT system shall be designed such that the CT conditions of operation to be used during a scan or a scan sequence are indicated prior to the initiation of a scan or a scan sequence. On CT systems having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of CT conditions of operation shall be visible from any position from which scan initiation is possible.

(F) Initiation of operation.

(i) The CT control panel and gantry shall provide visual indication whenever x rays are produced and, if applicable, whether the shutter is open or closed.

(ii) Means shall be provided to require operator initiation of each individual scan or series of scans.

(iii) All emergency buttons/switches shall be clearly labeled as to their functions.

(G) Termination of exposure.

(i) Means shall be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination shall occur within an interval that

limits the total scan time to no more than 110% of its preset value through the use of either a backup timer or devices that monitor equipment function.

(ii) A signal visible to the operator shall indicate when the x-ray exposure has been terminated through the means required by clause (i) of this subparagraph.

(iii) The operator shall be able to terminate the x-ray exposure at any time during a scan or series of scans under CT system control, of greater than 0.5 seconds duration. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to initiation of another scan.

(H) Additional requirements applicable to CT systems. Additional requirements applicable to CT systems containing a gantry manufactured after September 3, 1985, are as follows.

(i) The total error in the indicated location of the tomographic plane or reference plane shall not exceed 5 mm.

(ii) If the x-ray production period is less than 0.5 seconds, the indication of x-ray production shall be actuated for at least 0.5 seconds. Indicators at or near the gantry shall be discernible from any point external to the patient opening where insertion of any part of the human body into the primary beam is possible.

(iii) The deviation of indicated scan increment versus actual increment shall not exceed plus or minus 1 mm with any mass from 0 to 100 kilograms (kg) resting on the support device. The patient support device shall be incremented from a typical starting position to the maximum incremented distance or 30 cm, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment can be taken anywhere along this travel.

(2) Facility design requirements shall include the following.

(A) Provision shall be made for two-way aural communication between the patient and the operator at the control panel.

(B) Windows, mirrors, closed-circuit television, or an equivalent shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator can observe the patient from the control panel.

(i) Should the viewing system described in subparagraph (B) of this paragraph fail or be inoperative, treatment shall not be performed with the unit until the system is restored.

(ii) In a facility that has a primary viewing system by electronic means and an alternate viewing system, should the viewing system described in subparagraph (B) of this paragraph fail or be inoperative, treatment shall not be performed with the unit until one of the systems is restored.

(3) Measurements of the radiation output of the CT system, using the computed tomography dose index (CTDI) as recommended by the American Association of Physicists in Medicine (AAPM) and the International Council on Radiation Protection (ICRP), shall be performed by a licensed medical physicist.

(A) Performance of the radiation output measurements shall be:

(i) within 30 days after initial installation;

(ii) thereafter annually or at intervals not to exceed 14 months from the date of the prior radiation output measurements;

(iii) within 30 days of any major maintenance, that could affect radiation output; and

(iv) within 30 days of any major change in equipment operation for example, introduction of a new software package.

(B) The registrant shall ensure that radiation output measurements of a CT system are performed with a calibrated dosimetry system in accordance with subsection (i)(14) of this section.

(4) A maintenance schedule shall be developed and followed. This schedule shall be in writing or documented in an electronic reporting system and shall be included in the registrant's operating and safety procedures. The maintenance schedule shall include but not be limited to the following:

(A) radiation output measurements required by paragraph (3)(A) of this subsection;

(B) acquisition of images by a licensed medical physicist obtained with phantoms and using the same processing mode and CT conditions of operation as are used to perform radiation output measurements required by paragraph (3)(A) of this subsection; and

(C) acquisition of images by the registrant for quality control purposes obtained with phantoms and using protocol and intervals recommended by the manufacturer or the licensed medical physicist.

(5) The registrant shall maintain the images specified in paragraph (4)(B) and (C) of this subsection in accordance with subsection (s)(1) of this section for inspection by the agency. The images may be maintained by either of the following methods:

(A) photographic copies of the images obtained from the image display device; or

(B) images stored in digital form.

(6) Radiation protocol committee (RPC) for CT systems.

(A) Development of a RPC.

(i) Each registrant utilizing CT systems shall develop a RPC in accordance with the following:

(I) The registrant may establish a system-wide committee if the registrant has more than one site.

(II) One or more registrants may form a cooperative RPC as long as each facility has a representative on the committee.

(III) If the registrant has already established a radiation safety committee, the requirements of this subsection may be delegated to that committee if the members meet the requirements of subparagraph (B) of this paragraph.

(IV) The committee shall meet as often as necessary to conduct business but no less than once every 14 months.

(V) Interim meetings may be conducted by electronic means.

(ii) The registrant shall make a record of each RPC meeting to include the date, names of individuals in attendance, minutes of the meeting, and any action taken. The registrant shall maintain the record in accordance with subsection (s)(1) of this section for inspection by the agency.

(B) Members required for the RPC. Members shall include but not be limited to the following individuals:

(i) a radiologist or radiation oncologist;

(ii) a licensed medical physicist;

(iii) the RSO; and

(iv) other individuals as deemed necessary by the registrant.

(C) Establish and implement CT system protocols.

(i) The RPC shall establish and implement written protocols, or protocols documented in an electronic reporting system, that include but are not limited to the following.

(I) A method to be used to monitor the radiation output.

(II) A recommended reference level for CT procedures performed.

(III) Actions to be taken for cases when the reference level was exceeded which may include patient follow-up.

(IV) A review of the established protocols at an interval not to exceed 14 months.

(ii) The registrant shall make and maintain a record of each RPC protocol in accordance with subsection (s)(1) of this section for inspection by the agency. If the RPC revises a protocol, the registrant shall maintain the previous documentation after the revision in accordance with subsection (s)(1) of this section for inspection by the agency.

(D) Procedures for maintaining records.

(i) The registrant shall make and maintain a record of radiation output information so the radiation dose to the skin may be estimated in accordance with established protocols. The record shall include the following:

(I) patient identification;

(II) type and date of examination;

(III) identification of the CT system used; and

(IV) if the CT system is capable of calculating and displaying these values:

(-a-) $CTDI_{vol}$;

(-b-) DLP; or

(-c-) recommendations as identified in "Comprehensive Methodology for the Evaluation of Radiation Dose in X-ray Computed Tomography. Report of American Association of Physicists in Medicine, Task Group 111; The Future of CT Dosimetry, February 2010," may be used to meet compliance with this subsection.

(ii) The registrant shall maintain records required by this subparagraph in accordance with record retention policies of the facility.

(o) Equipment performance evaluation (EPE).

(1) Frequency of EPE. For x-ray, fluoroscopic, and CT systems, an EPE shall be performed at the frequency listed in the following table.

Figure: 25 TAC §289.227(o)(1)

(2) Performance of EPE. For all x-ray systems an EPE shall be performed by or under the supervision of a licensed medical physicist:

(A) within 30 days after initial installation of new machines;

(B) within 30 days after reinstallation of a machine; or

(C) within 30 days after repair of a machine component that would effect the radiation output that includes but is not limited to the timer, tube, and power supply.

(3) Records of EPE results. Records of the test results shall include:

(A) measurements and numerical readings;

(B) indicate a pass or fail for each test; and

(C) be reviewed and signed by the licensed medical physicist.

(4) Correction of EPE results.

(A) Any items not meeting the specifications of the EPE shall be corrected or repaired. The correction or repair shall begin within 30 days following the EPE and shall be performed according to a plan designated by the registrant. Correction or repair shall be completed no longer than 90 days from discovery unless authorized by the agency.

(B) The registrant shall make and maintain records of corrections or repairs in accordance with subsection (s)(1) of this section for inspection by the agency.

(5) Calibrated dosimetry system. The registrant shall ensure that measurements of the radiation output of an x-ray system are performed with a calibrated dosimetry system in accordance with subsection (i)(14) of this section.

(6) EPE for x-ray systems.

(A) Timer. The accuracy of the timer shall meet the manufacturer's specifications. If the manufacturer's specifications are not obtainable, the timer accuracy shall be plus or minus 10% of the indicated time with testing performed at 0.5 second.

(B) Exposure reproducibility. Exposure reproducibility shall meet the requirements of subsection (l)(4) of this section.

(C) Linearity. mR/mAs (mGy/mAs) stations shall meet the requirements of subsection (l)(5) of this section.

(D) kVp. If the registrant possesses documentation of the appropriate manufacturer's kVp specifications, the radiation machine shall meet those specifications. If the registrant does not possess documentation of the appropriate manufacturer's kVp specifications, the indicated kVp shall be accurate to within plus or minus 10% of the indicated setting at no less than 3 points over the usual operating range of the machine.

(E) Tube stability. The x-ray tube shall remain physically stable during exposures. In cases where tubes are designed to move during exposure, the registrant shall assure proper and free movement of the unit.

(F) Collimation. The following items shall meet the requirements of subsection (l)(1) of this section:

(i) numerical indicators of x-ray field size;

(ii) light field versus x-ray field congruence;

(iii) automatic and semi-automatic collimators unless disabled; and

(iv) center of x-ray field alignment with center of image receptor.

(G) Entrance exposure (air kerma) limits. Entrance exposure (air kerma) limits shall meet the requirements specified in subsection (j) of this section and shall be determined for all examinations specified in Table I of subsection (j) of this section, that are performed by the registrant.

(7) EPE for fluoroscopic systems and spot film devices. Fluoroscopic systems shall meet the requirements of subsections (i)(14) and (m)(1)(C) and (3) of this section.

(8) EPE for CT systems. CT systems shall meet the requirements of subsections (i)(14) and (n)(1)(H) of this section.

(p) Automatic and manual film processing for facilities and mobile services.

(1) Films shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer. The specified developer temperature for automatic processing and the time-temperature chart for manual processing shall be posted near the film processing area. If the registrant determines an alternate time-temperature relationship is more appropriate for a specific facility, that time-temperature relationship shall be documented and posted.

(2) Chemicals shall be replaced according to the chemical manufacturer's or supplier's recommendations or at an interval not to exceed 3 months.

(3) Darkroom light leak tests shall be performed at intervals not to exceed 6 months.

(4) Lighting in the film processing/loading area shall be maintained with the filter, bulb wattage, and distances recommended by the film manufacturer for that film emulsion or with products that provide an equivalent level of protection against fogging.

(5) Corrections or repairs of the light leaks or other deficiencies in paragraphs (2) - (4) of this subsection shall be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the agency. The registrant shall make a record of the correction or repairs to include the date and initials of the individual performing these functions. The records shall be maintained in accordance with subsection (s)(1) of this section for inspection by the agency.

(6) Documentation of the items in paragraphs (2), (3), and (5) of this subsection shall include the date and initials of the individual completing these items. The registrant shall maintain these records at the site where performed in accordance with subsection (s)(1) of this section for inspection by the agency.

(q) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film units, or other alternative processing systems shall follow manufacturer's recommendations for image processing. Documentation that the registrant is following manufacturer's recommendations shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (s)(1) of this section for inspection by the agency.

(r) Digital imaging acquisition systems. Users of digital imaging acquisition systems shall follow quality assurance/quality control protocol for image processing established by the manufacturer or, if no manufacturer's protocol is available, by the registrant. The registrant shall include the protocols, whether established by the registrant or the manufacturer, in its operating and safety procedures. The registrant shall document the frequency at which the quality assurance/quality control protocol is performed. Documentation shall include the date and initials of the individual completing the document and shall be maintained at the site where performed in accordance with subsection (s)(1) of this section for inspection by the agency.

(s) Record/document requirements for mobile services and authorized use locations.

(1) Each registrant shall maintain the following records/documents at each site, including authorized records sites for mobile services at the time intervals specified, for inspection by the agency. The records may be maintained in electronic format.
Figure: 25 TAC §289.227(s)(1)

(2) Records required in item F of the table in paragraph (1) of this subsection shall include the following:

(A) manufacturer's name, model and serial number;

(B) unique identification of the calibrated dosimetry system; and

(C) name of the individual recording the information.

(3) Copies of the records/documents in items (A) - (D), (H), (J), and (N) - (Q) of the table in paragraph (1) of this subsection shall be kept with radiation machines authorized to be used for mobile services. Mobile services with on-board film processors shall maintain the records in items (O) - (Q) of the table in paragraph (1) of this subsection, as applicable, with the processor or system for a period of no less than 1 year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300517
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 1, 2013
Proposal publication date: August 10, 2012
For further information, please call: (512) 776-6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.24

The General Land Office (GLO) adopts amendments to 31 TAC §15.24 relating to the City of Port Aransas's Beach Dune Protection and Beach Access Plan (Plan), with changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9850). The amendments adopt a new subsection (c) which certifies as consistent with state law the Plan, as amended by the Erosion Response Plan (ERP). The City of Port Aransas (City) adopted the ERP on August 16, 2012.

Copies of the adopted Plan or any amendments to the Plan are available from the City of Port Aransas, 710 W. Avenue A, Port Aransas, Texas 78373-4128, phone number (361) 749-4111, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, phone number (512) 463-5277.

BACKGROUND

The City is a coastal community bordering on the Gulf of Mexico. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located within the City.

Pursuant to §33.607 of the Coastal Public Lands Management Act of 1973 (Texas Natural Resources Code, Chapter 33) and the Beach Dune Rules (31 TAC §15.17) the City has prepared an ERP and submitted it to the GLO for certification as an amendment to its Plan. Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §15.3), a local government with jurisdiction over Gulf beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. The City amended its Plan to include the ERP by adopting the ERP as a city ordinance on August 16, 2012. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO under 31 TAC §15.3(o)(4).

THE CITY OF PORT ARANSAS AMENDMENTS

The City has adopted an ERP and submitted it to the GLO for certification as an amendment to its Plan in accordance with 31 TAC §15.17, 31 TAC §15.3(o) and Texas Natural Resources Code §33.607 and §61.011. The City amended its Plan by adopting the ERP as a city ordinance on August 16, 2012. Based on the information provided by the City, the GLO has determined that the ERP is consistent with the Open Beaches Act, the Dune Protection Act, and the 31 TAC Chapter 15 and that the requirements of the ERP are incorporated into the City's Plan and procedures for reviewing and approving permit applications. Therefore, the GLO finds that the approved amendments to the Plan are consistent with state law and hereby approves and certifies the City's ERP as amendments to its Plan.

REASONED JUSTIFICATION

The justification for the adopted amendments is that implementation of an ERP will preserve and enhance dunes, which delays erosion, reduces the intensity of storm surges and increases protection for infrastructure located in coastal areas. Construction standards established in the ERP will increase protection against erosion and storms for structures located within or landward of the dune conservation area. Construction requirements will reduce loss of life and reduce public expenditures associated with damage to and loss of public infrastructure due to erosion, storm damage, and disaster response costs. The identification of restoration areas in the ERP will focus mitigation and restoration efforts in areas that may be vulnerable to storm inundation and are potential avenues for floodwaters that may cause damage to public infrastructure and private properties. The setback line in the ERP allows for the formation of dunes, which maintains a natural buffer against normal storm tides and allows dune processes to function with minimal disturbance to the dune system and property owners. Preservation of and improvements to foredune ridges protect existing structures and properties against damage from storm surge and reduce the possibility of structures becoming located on public beaches or state-owned submerged lands, which results in a loss to landowners and increases expenditure of public funds for removal of the unauthorized structures from public beaches. Improvements to beach access points preserve public access and protect against degradation of coastal areas by erosion and storm surge.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendments to 31 TAC §15.24 relating to Certification Status of the City of Port Aransas Beach Dune Protection and Beach Access Plain are subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11, relating to Goals, and §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune regulations and the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the 30-day comment period.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §33.607 and §61.011 relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and reduce public expenditures from erosion and storm damage to public and private property, including public beaches. Texas Natural Resources Code §§33.601 - 33.613 and 61.015 are affected by the amendments.

§15.24. Certification Status of City of Port Aransas Beach Dune Protection and Beach Access Plan.

(a) The City of Port Aransas has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The city's plan was adopted on February 15, 1995.

(b) The General Land Office certifies as consistent with state law the amendment to the City of Port Aransas plan that was adopted by the City Council of the City of Port Aransas on February 17, 2005, Resolution No. 2005-06. The resolution amended the plan to increase the beach user fees imposed for parking on the beach in fee areas designated in the plan.

(c) The General Land Office certifies as consistent with state law the amendment to the City of Port Aransas plan that was adopted by the City Council of the City of Port Aransas on August 16, 2012, Resolution No. 2012-07. The resolution amended the plan by adding the City of Port Aransas Erosion Response Plan as Attachment 8 to the plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300560

Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: March 3, 2013
Proposal publication date: December 21, 2012
For further information, please call: (512) 475-1859

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31 TAC §15.31

The General Land Office (GLO) adopts an amendment to 31 TAC §15.31, relating to Certification Status of City of Corpus Christi Dune Protection and Beach Access Plan (Plan). The amendment is adopted without changes to the proposed text published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8757) and will not be republished.

BACKGROUND AND REASONED JUSTIFICATION

Pursuant to Texas Natural Resources Code §33.607 of the Coastal Public Lands Management Act and 31 TAC §15.17 of the GLO's Beach/Dune Rules, the City of Corpus Christi (City) has prepared an Erosion Response Plan (ERP) and submitted it to the GLO for certification as an amendment to its Plan. The ERP, which was jointly prepared by the City of Corpus Christi and Nueces County, was formally adopted by the Corpus Christi City Council by Ordinance No. 029541 on June 26, 2012.

Pursuant to Texas Natural Resources Code §61.015 of the Open Beaches Act and 31 TAC §15.3(o) the Beach/Dune Rules, a local government with jurisdiction over Gulf beaches is required to submit its Plan and any Plan amendments to the GLO for review and approval. The GLO must certify by rule that each Plan or Plan amendment is consistent with state law, including the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.16, 15.21 - 15.36, 15.41, and 15.42).

In accordance with Texas Natural Resources Code §33.607 and 31 TAC §15.17, the City's ERP incorporates several planning elements designed to reduce public expenditures due to erosion and storm damage to public and private property. The ERP, among other provisions, (1) establishes a building setback line located 350 feet landward of the line of vegetation; (2) allows for exemptions to the setback criteria for existing structures or where there is no practicable alternative to building seaward of the setback line; (3) provides construction conditions for exempt structures; (4) enhances dune protections by identifying priority dune mitigation areas and by setting goals for foredune depth, elevation, and vegetation coverage; (5) defines the minimum width of the public beach for provision of public beach access; (6) preserves and enhances public beach access by addressing improvements that will minimize storm damage to public access ways and by establishing procedures for inspecting and repairing access ways following hurricanes; and (7) provides criteria for voluntary acquisition of property seaward of the setback line.

In light of the applicable statutory and regulatory requirements, the ERP and the associated Plan amendment are consistent with state law. Accordingly, the adopted rule amendment to §15.31 adds a new subsection (e) certifying as consistent with state law the inclusion of the ERP in the City's Plan.

The justification for adoption of the amendment is that implementing the ERP will reduce public expenditures due to storm damage and erosion, increase protection for public and private properties and infrastructure located in coastal areas, and reduce the risk to life and property from storm events. Key elements of the ERP such as the building setback line will reduce the hazards, damage, and economic losses that occur when buildings are subjected to erosion and storm surges. By encouraging building further landward, the setback line will preserve the area seaward of the setback line and minimize the number of structures that locate in vulnerable areas. For properties exempted from the setback, the ERP will require stricter building standards that will also reduce the hazards, damage, and losses caused by erosion and storm surges.

Additional public benefits that justify adoption of the amendment include the ERP's goals and plans for dune enhancement and public beach access. By facilitating a healthy dune system, the ERP will ensure that there is a natural buffer against normal storm tides. This natural buffer will help reduce the risk to life and property from storm damage and reduce the public expenses of disaster relief. The ERP will also enhance public beach access by prioritizing improvements to beach access points and providing for post-storm inspections of access points.

RESPONSE TO PUBLIC COMMENT

No public comments were received regarding the rule amendment as proposed.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to 31 TAC §15.31 is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11, relating to Goals, and §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune Rules and the CMP goals and policies. No comments were received from the public or the GLO Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §33.607 and §61.011, relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and to reduce public expenditures from erosion and storm damage to public and private property, including public beaches. Texas Natural Resources Code §§33.601 - 33.613 and 61.015 are affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300487
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: February 26, 2013
Proposal publication date: November 2, 2012
For further information, please call: (512) 475-1859

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31 TAC §15.33

The General Land Office (GLO) adopts an amendment to 31 TAC §15.33, relating to Certification Status of Nueces County Dune Protection and Beach Access Plan (Plan). The amendment is adopted without changes to the proposed text published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8759) and will not be republished.

BACKGROUND AND REASONED JUSTIFICATION

Pursuant to Texas Natural Resources Code §33.607 of the Coastal Public Lands Management Act and 31 TAC §15.17 of the GLO's Beach/Dune Rules, Nueces County (County) has prepared an Erosion Response Plan (ERP) and submitted it to the GLO for certification as an amendment to its Plan. The ERP, which was jointly prepared by Nueces County and the City of Corpus Christi, was formally adopted by the Nueces County Commissioners Court on June 27, 2012.

Pursuant to Texas Natural Resources Code §61.015 of the Open Beaches Act and 31 TAC §15.3(o) the Beach/Dune Rules, a local government with jurisdiction over Gulf beaches is required to submit its Plan and any Plan amendments to the GLO for review and approval. The GLO must certify by rule that each Plan or Plan amendment is consistent with state law, including the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC Chapter 15).

In accordance with Texas Natural Resources Code §33.607 and 31 TAC §15.17, the County's ERP incorporates several planning elements designed to reduce public expenditures due to erosion and storm damage to public and private property. The ERP, among other provisions, (1) establishes a building setback line located 350 feet landward of the line of vegetation; (2) allows for exemptions to the setback criteria for existing structures or where there is no practicable alternative to building seaward of the setback line; (3) provides construction conditions for exempt structures; (4) enhances dune protections by identifying priority dune mitigation areas and by setting goals for foredune depth, elevation, and vegetation coverage; (5) defines the minimum width of the public beach for provision of public beach access; (6) preserves and enhances public beach access by addressing improvements that will minimize storm damage to public access ways and by establishing procedures for inspecting and repairing access ways following hurricanes; and (7) provides criteria for voluntary acquisition of property seaward of the setback line.

In light of the applicable statutory and regulatory requirements, the ERP and the associated Plan amendment are consistent with state law. Accordingly, the adopted rule amendment to §15.33 adds a new subsection (l) certifying as consistent with state law the inclusion of the ERP in the County's Plan.

The justification for adoption of the amendment is that implementing the ERP will reduce public expenditures due to storm damage and erosion, increase protection for public and private properties and infrastructure located in coastal areas, and reduce the risk to life and property from storm events. Key elements of the ERP such as the building setback line will reduce the hazards, damage, and economic losses that occur when buildings are subjected to erosion and storm surges. By encouraging building further landward, the setback line will preserve the area seaward of the setback line and minimize the number of structures that locate in vulnerable areas. For properties exempted from the setback, the ERP will require stricter building standards that will also reduce the hazards, damage, and losses caused by erosion and storm surges.

Additional public benefits that justify adoption of the amendment include the ERP's goals and plans for dune enhancement and public beach access. By facilitating a healthy dune system, the ERP will ensure that there is a natural buffer against normal storm tides. This natural buffer will help reduce the risk to life and property from storm damage and reduce the public expenses of disaster relief. The ERP will also enhance public beach access by prioritizing improvements to beach access points and providing for post-storm inspections of access points.

RESPONSE TO PUBLIC COMMENT

No public comments were received regarding the rule amendment as proposed.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to 31 TAC §15.33 is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11, relating to Goals, and §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune Rules and the CMP goals and policies. No comments were received from the public or the GLO Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §33.607 and §61.011, relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and to reduce public expenditures from erosion and storm damage to public and private property, including public beaches. Texas Natural Resources Code §§33.601 - 33.613 and 61.015 are affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300488
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: February 26, 2013
Proposal publication date: November 2, 2012
For further information, please call: (512) 475-1859

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31 TAC §15.35

The General Land Office (GLO) adopts amendments to 31 TAC §15.35, relating to the Galveston County Dune Protection and Beach Access Plan (Plan), without changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8762). The text of the rule as adopted will not be

republished. The amendments to 31 TAC §15.35 add new subsections (b) and (c) and certify as consistent with state law the amendments to the Plan that were adopted by Galveston County on August 7, 2012.

Copies of the adopted Plan or any amendments to the Plan are available from Galveston County, County Engineer's Office, 722 Moody, Galveston, Texas 77550, phone number (409) 770-5399, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, phone number (512) 463-5277.

BACKGROUND

Galveston County is a coastal county. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located within Galveston County.

Pursuant to §33.607 of the Coastal Public Lands Management Act of 1973 (Texas Natural Resources Code, Chapter 33) and the Beach Dune Rules (31 TAC §15.17) Galveston County has prepared an Erosion Response Plan (ERP) and submitted it to the GLO for certification as an amendment to its Plan. Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §15.3), a local government with jurisdiction over Gulf beaches must submit its dune protection and beach access plan, and any amendments to such a plan, to the GLO for certification. Galveston County amended its Plan on August 7, 2012. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO under 31 TAC §15.3(o)(4).

THE GALVESTON COUNTY AMENDMENTS

Galveston County has adopted an ERP and submitted it to the GLO for certification as an amendment to its Plan in accordance with 31 TAC §15.17, 31 TAC §15.3(o) and Texas Natural Resources Code §33.607 and §61.011. Galveston County amended its Plan on August 7, 2012, to adopt an ERP. Based on the information provided by Galveston County, the GLO has determined that the ERP is consistent with the Open Beaches Act, the Dune Protection Act, and the 31 TAC Chapter 15, and that the requirements of the ERP are incorporated into Galveston County's Plan and procedures for reviewing and approving permit applications. Therefore, the GLO finds that the approved amendments to the Plan are consistent with state law and hereby approves and certifies Galveston County's ERP as an amendment to its Plan.

REASONED JUSTIFICATION

The justification for the adopted amendments is that implementation of an ERP will preserve and enhance dunes, which delays erosion, reduces the intensity of storm surges, and increases protection for infrastructure located in coastal areas. Construction standards established in the ERP will increase protection against erosion and storms for structures located within or landward of the dune conservation area. Construction requirements will reduce loss of life and reduce public expenditures associated with damage to and loss of public infrastructure due to erosion, storm damage, and disaster response costs. The identification of restoration areas in the ERP will focus mitigation and restoration efforts in areas that may be vulnerable to storm inundation and are potential avenues for floodwaters that may cause damage to public infrastructure and private properties. The setback line in the ERP allows for the formation of dunes, which maintains a natural buffer against normal storm tides and allows dune processes to function with minimal disturbance to the dune system and property owners. Preservation of and improvements to foredune ridges protect existing structures and properties against damage from storm surge and reduce the possibility of structures becoming located on public beaches or state-owned submerged lands, which results in a loss to landowners and increases expenditure of public funds for removal of the unauthorized structures from public beaches. Improvements to beach access points preserve public access and protect against degradation of coastal areas by erosion and storm surge.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendments to 31 TAC §15.35 relating to Galveston County's Plan are subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11, relating to Goals, and §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune regulations and the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the 30-day comment period.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §33.607 and §61.011 relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and reduce public expenditures from erosion and storm damage to public and private property, including public beaches. Texas Natural Resources Code §§33.601 - 33.613 and 61.015 are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300561
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
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Proposal publication date: November 2, 2012
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 2. SPORTS AND EVENTS TRUST FUND

SUBCHAPTER B. EVENTS TRUST FUND

34 TAC §§2.200 - 2.205

The Comptroller of Public Accounts adopts amendments to §2.200, concerning definitions; §2.202, concerning request to establish a trust fund; §2.203, concerning reporting; §2.204, concerning disbursements; and new §2.205, concerning allowed and disallowed costs, with changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9322). The Comptroller of Public Accounts adopts amendments to §2.201, concerning eligibility, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9322).

The purpose of the amendments is to more clearly define what costs are compensable under the Events Trust Fund (ETF) program, as well as provide guidelines for what costs are not compensable under the program. The amendments clarify what documents and information are required by the comptroller as part of the application process for participation in the program, and also clarify procedures used by cities, counties and local organizing committees (LOC) in the disbursement process. The amendments increase the accountability of participating cities, counties, and LOCs for the expenditure of ETF monies.

Section 2.200, concerning definitions, adds definitions of "cost," "local share," and "travel" in order to more clearly define what costs are compensable under the program. The definition of "event support contract" is also amended to clarify that the term does not include requests for bid, requests for proposals or selection letters from a site selection organization. The definitions of "endorsing county," "endorsing municipality," and "requestor" are also clarified. Based on comments, changes to the definition of "local organizing committee" in the proposal are withdrawn.

Section 2.201, concerning eligibility, is amended to add a new subsection to provide that no event related contract may compel the comptroller to perform any act not otherwise authorized by law. No comments were received on this provision; consequently no changes to the amended rule as proposed have been made.

Section 2.202, concerning request to establish a trust fund, is amended to require additional documentation including a worksheet form as well as an affidavit from an endorsing municipality, endorsing county, LOC, and any provider of economic data attesting to the accuracy of the information provided.

Section 2.203, concerning reporting, is amended to describe in more detail the information required by the comptroller under the reporting requirement, including hotel information, attendance information, and ticket sale information.

Section 2.204, regarding disbursements for event costs, is amended to require that additional documentation and information be submitted by endorsing cities, counties and LOCs as part of their disbursement request. The amendments to this section also require the funds in the trust fund must be fully expended within one year and specifies under what circumstances the comptroller will not consider a disbursement request.

New §2.205, concerning allowed and disallowed costs, is added to describe what types of costs will or will not allowed under the program.

The comptroller received comments from: the City of San Antonio (hereinafter "San Antonio"); Don Hoyte of Texas-TrustFunds.com (hereinafter "Don Hoyte"); the City of Fort Worth (hereinafter "Fort Worth"); identical comments from the Greater Houston Convention and Visitors Bureau, the Harris County-Houston Sports Authority, the Houston Sports and Convention Corporation, and the City of Arlington (hereinafter "Consolidated Commenters"); and the Austin Convention and Visitors Bureau/Austin Sports Commission (hereinafter "Austin CVB").

Comment: Fort Worth and Austin CVB commented regarding the effective date of the rule. Fort Worth stated that the rules' provisions should apply from the effective date of the rule with no retroactive application. Austin CVB requested that the comptroller establish some future implementation date for the rule.

Response: The comptroller recognizes that currently there are a number of events in various stages of the program's processes. In order to clarify the applicability of the rules as adopted, the comptroller amends the rules to add provisions which specifically address the effective date of certain rules. The comptroller has added new subsections §§2.202(j), 2.203(d), 2.204(k) and 2.205(d) to explain how events already in the Events Trust fund process will be treated under the adopted rules.

Comment: The Consolidated Commenters commented regarding proposed changes to the definition of "endorsing municipality" in §2.200(4) which adds language to the definition clarifying that in order to qualify as an endorsing municipality, the event site must be within the boundaries of the municipality at the time of application to the site selection organization. The commenters state that the rule fails to take into account the situation where a site selection organization designates or changes the site of an event or its related activities after the application is made. The commenters oppose the change.

Response: The proposed rule simply clarifies current law which defines an endorsing municipality as a municipality that contains a site selected by a site selection organization for an event. (VACS, Art. 5190.14, §5C(a)(2).) The proposed rule specifies what is meant by the term "contains" as used in the statute.

Comment: The Consolidated Commenters state that the proposed amendment to the definition of "Local Organizing Committee" in §2.200(8) is unclear since the amended definition simply references that the LOC is subject to all requirements in the statute. The commenters state that it does not understand what this change is intended to accomplish.

Response: The proposed rule is intended to clarify that all LOCs are subject to provisions in the statute such as the public information act and the open meetings act. Since the rule change was intended to be informational, the comptroller will withdraw the proposed amendment to the rule.

Comment: The Consolidated Commenters disagree with the affidavit requirement in §2.202(a)(5) whereby an endorsing city, county, LOC, or any person providing economic data to the comptroller must attest to the accuracy of the information provided. The commenters argue that the comptroller is in the best position to verify the accuracy of the information. Fort Worth made a similar comment regarding this subsection of the rule.

Response: While the agency believes it is in the best interest of the state that affidavits attesting to the accuracy of certain information be mandatory, it agrees that some information in a

request to establish a trust fund is unknowable at the time the request is submitted. In consideration of the concerns raised by the commenters, the agency has added clarifying language to state that the affiant attests to the accuracy of the information to the best knowledge of the affiant.

Comment: The Consolidated Commenters ask about §2.203(c) which authorizes the comptroller to promulgate a form to collect information under §2.203. The commenters ask whether any additional information outside of §2.203(a) will be requested.

Response: The list provided in the proposed rule is for informational purposes, and the comptroller will identify any additional information via the form itself or other public means such as the agency website. The informational requests are authorized under the existing statute. The creation of a form is intended to streamline and simplify collection of the information.

Comment: The Consolidated Commenters comment on the requirement in §2.204(e)(4) that the comptroller require both copies and specifications for any publication or advertising cost included in the disbursement request. The commenters state that it should be sufficient that a copy or the specifications for the advertising be provided. Don Hoyte comments on the same rule stating that the requirement should be limited to those items for which the requesting entity has access.

Response: To the extent that it would be impractical for a requestor to provide either a copy or a set of specifications for publications and advertising, the comptroller agrees and has amended the rule to require either copies or specifications of advertising or publications, instead of requiring both. Furthermore, since under proposed §2.204(h)(2) a disbursement is limited to pay those costs belonging to the requestor and not a third party, the requestor should have access to copies or specification of advertising or publications that they pay for.

Comment: Consolidated Commenters commented on §2.204(e)(7) which requires a disbursement request letter submitted by a local organizing committee to include documentation showing the prior approval of the disbursement request by each contributing endorsing entity. The commenters note that historically the comptroller's office has accepted the prior approval of a contributing endorsing municipality given through a trust fund agreement, and that it is likely that the LOC and not the endorsing municipality is the party to the event support contract and is hosting the event. The commenters also state that the proposed rule appears to substantially change the existing process by placing the burden for audit review on municipalities and counties. Don Hoyte asks regarding this subsection, at what point the prior approval should be obtained.

Response: The purpose of §2.204(e)(7) is to ensure that endorsing municipalities and counties are clear about their responsibilities relating to disbursements from the trust fund and to assure taxpayers and the comptroller that the appropriate accountability exists for how trust funds are used. While the comptroller's office may have previously accepted prior approvals mentioned in an event support contract, the comptroller's office has concluded that the changes made in §2.204(e)(7) and §2.204(i) will result in greater accountability by compelling endorsing municipalities and counties to focus on the expenditures made. As for the audit process, the comptroller is not statutorily responsible for auditing event trust fund disbursement requests under the events trust fund statute. Comptroller staff regularly reviews disbursement requests because the comptroller requires a review prior to making a disbursement. The purpose of the comptroller review is to ascertain whether there is any indication that statutory requirements are not met prior to making a disbursement from the trust fund. The comptroller does not review event related expenses for compliance with municipal or county laws, rules and policies for the appropriation and use of funds belonging to those entities. For these reasons, the comptroller wants to ensure that local government authorized officials are clear about their responsibilities related to issuing prior approval for a disbursement. The Consolidated Commenters correctly assert that the comptroller accepts documentation of prior approval required to be given by an endorsing municipality or endorsing county through interlocal agreement. Nothing in the proposed rule would require that entities engaging in that practice to alter that practice. In response to Don Hoyte's question, the comptroller interprets the statute to mean that the approval must be given prior to the time that the requestor submits a disbursement request to the comptroller. The proposed rule would require proof of that approval to be included with a disbursement request before the disbursement request could be considered.

Comment: Consolidated Commenters comment on §2.204(i) which requires that each disbursement request be accompanied by a certification completed by an endorsing municipality or endorsing county approving of each cost submitted for disbursement. The commenters ask that if the LOC and not the endorsing municipality is a party to the event support contract, how could an endorsing municipality make this certification with respect to the obligation of a private third party. The commenters ask since the comptroller already has an audit staff reviewing reimbursement requests, what is the municipality supposed to add to the review process and on what basis is a municipality supposed to consider whether to grant approval.

Response: As to the question regarding the endorsing municipality making a certification where a LOC has entered an events support contract, in entering the event support contract the LOC is acting on the endorsing municipality's behalf and is not acting independently. The certification requirement is consistent with the prior approval provision in Art. 5190.14, §5C(k) which states that the comptroller may make a disbursement from the trust fund on the prior approval of each contributing endorsing municipality or endorsing county for a purpose for which a LOC, an endorsing municipality, or an endorsing county is obligated under an event support contract. This statutory language specifically contemplates that an endorsing municipality is still responsible for approval even on an event support contract entered into by a LOC. As to the question regarding what the endorsing municipality is to add to the review process in light of the comptroller's audits and on what basis a municipality is supposed to consider whether to grant approval, as noted in the prior response, the comptroller does not review event related expenses for compliance with municipal or county laws, rules and policies for the appropriation and use of funds belonging to those entities. Furthermore, a certification requirement will increase the endorsing municipality's awareness of what expenses public funds are being spent on.

Comment: The Consolidated Commenters comment on §2.205(b)(15) which provides that any expenses which an endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event are not eligible to be paid. The commenters ask on what basis is a municipality supposed to determine what expenses are unnecessary. The commenters also ask about the implications of this rule for multijurisdictional events and whether expenses for hosting events are now required to be accounted for on a jurisdiction by

jurisdiction basis. The commenters ask whether this means that an endorsing municipality can prevent a LOC from receiving reimbursement for funds that it has previously expended. The commenters state that the proposed rules appear to be inefficient, unnecessary, and likely to have negative consequences in attracting events to the state.

Response: As stated in previous responses, the purpose of these rules is to give endorsing municipalities and counties greater responsibility for oversight and review. If a LOC incurs expenses which it intends to be reimbursed for, this is an issue between the LOC and the relevant endorsing municipality or county which the comptroller has seen addressed in agreements between a LOC and an endorsing entity. Likewise, expenses incurred for multi-jurisdictional events should be planned for and determinations regarding reimbursements should be made subject to agreement between the parties. The comptroller believes there is no new burden or inefficiency placed on any local governmental entity for signing a statement attesting to an approval that is already required by law.

Comment: Fort Worth states that the phrase "any related event" as used in §2.202(j) is vague and ambiguous and could result in inconsistent treatment between events. The commenter requests that the term be specifically defined in the rule and republished.

Response: The comptroller agrees to modify the rule to specify that an event includes any activities related to or associated with the event.

Comment: Fort Worth comments that the proposed deletion in §2.204(a)(2) of statutory language authorizing expenses that are "necessary or desirable for the conduct of an event" could create restrictions on expenses that are otherwise allowed by statute. The commenter asks that the language be reinstated.

Response: The comptroller proposed removing the quoted language from the rule because the language already exists in statute and does not appear to provide any substantive guidance by also including the same language in the rule.

Comment: Don Hoyte commented on §2.200(2) adding the definition of "cost" stating that it is not unusual for some revenues to be collected by an Events Trust Fund applicant where those revenues do not belong to or are under the control of the applicant. Don Hoyte states that mere collection of revenues should not be the criteria as to whether or not they could be used for a specific expense or obligation. San Antonio also commented on this definition asking whether the definition of cost requires a city to reduce any submitted expenses for events such as the Alamo Bowl by any revenue generated for the event, or does it relate only to event operational expenses.

Response: In any case where revenues earned by a requestor that are specifically pledged to cover a particular expense or obligation of the requestor, the comptroller believes that the cost of the expense is covered by the revenue earned to the extent that it is pledged and earned. The comptroller agrees that the concept is specific to revenues earned by or belonging to a requestor and has amended the definition of cost to specify that the definition applies only to a requestor's expenses and proceeds. The definition of cost is not limited to any particular type of expense. Any revenues received that were owed to a requestor under the terms of the event support contract or its supporting contracts would be required to be reduced from any event expense that the revenues were intended to cover.

Comment: Don Hoyte comments on §2.205(a)(7)(C)(ii) which addresses the compensability of certain operational costs of the endorsing municipality's or endorsing county's facility that are net of rent or rent related proceeds that are received as a result of hosting the event. Don Hoyte asks what are "rent related proceeds." According to Hoyte to be considered "proceeds" the amounts received must be actually under the control of the requesting entity and not merely collected by them.

Response: "Rent related proceeds" are proceeds that are remitted to the facility as part of a rental or lease agreement with that facility for the event. The context of §2.205(a)(7)(C)(ii) specifically relates to facilities owned by the endorsing city or county, and therefore the rent related proceeds and the operational costs would both belong to those entities and would not be eligible for reimbursement to a LOC as a requestor.

Comment: Don Hoyte comments that the modified definitions of "endorsing county" and "endorsing municipality" under §2.200(3) and (4) should be further amended to recognize that many events have many different components and that not all components need occur at the same site.

Response: The comptroller does not agree that additional changes are necessary, but that the definitions as proposed are sufficiently clear.

Comment: Don Hoyte suggests that the definition of "event support contract" as amended in §2.200(5) should also include examples of what an appropriate event support contract should look like.

Response: No change to the proposed rule is necessary. The definition section of the rule is not the appropriate place to provide an example of an event support contract. The comptroller currently provides basic guidance on events support contracts on its website: http://www.texasahead.org/tax_programs/event_fund/96-1714-EventsTrustFundSupport.pdf.

Comment: Don Hoyte comments on the amendment to §2.202(a)(3) which provides that a request for participation in the trust fund program must include an economic impact study including a listing of "any" data for any related activities. Hoyte states that the word "any" should be omitted because it could imply that if the requesting entity omits "any" data, this could constitute grounds for not approving the application.

Response: No change is necessary. The comment is based on speculation. The addition of the word "any" is purely to make the sentence grammatically correct.

Comment: Don Hoyte requests that §2.202(b) be modified to provide that the economic impact study must contain detailed information on direct expenditures and direct impact data for the endorsing municipality, endorsing county and for the requested market area if the data affects the amounts requested under the ETF. The commenter points out that some portions of studies conducted on events do not affect the amount requested under the program.

Response: The comptroller agrees to make a conforming change to the rule as suggested.

Comment: Don Hoyte comments that §2.202(i) which requires a requestor to timely provide any additional information requested by the comptroller, does not adequately define what is meant by "timely."

Response: The comptroller agrees to withdraw proposed subsection (i).

Comment: Don Hoyte comments that removing the phrase "by the requestor" from the requirement in §2.203(a) that after the conclusion of an event, a requestor be required to provide certain information, may imply that the comptroller can hold a requestor responsible for information that may not be available to them.

Response: The deleted language will be restored so that it is consistent with the statute.

Comment: Don Hoyte comments on §2.204(e)(9) which requires a requestor's disbursement request to contain a copy of a financial report the requestor is required to submit to the site selection organization under an event support contract. Mr. Hoyte states that in some cases some requesting entities may be required to submit financial reports detailing the disposition of funds after receipt of all funds, creating a conflict with the rule. The commenter requests that the rule be changed.

Response: The comptroller acknowledges the potential that a financial report may not be completed at the time an Events Trust Fund disbursement request is due to the comptroller's office. The comptroller amends the proposed rule to allow the comptroller to grant an exemption to the requirement.

Comment: Don Hoyte objects to the comptroller's requiring funds to be expended within one year of the date the first disbursement request is received by the comptroller as set out in §2.204(f). The commenter states that by this rule, the comptroller's office is exceeding its statutory authority, and that the comptroller should terminate a fund only after specifically contacting the requesting entity after one year and asking the requestor if it wishes to continue with the reimbursement process. San Antonio also asked in relation to this rule how the term "first disbursement request" will be defined.

Response: The comptroller proposes imposing a time limit on the disbursement process as a matter of the comptroller's underlying authority to administer the Events Trust Fund program and to adopt rules for implementation. (VACS Art. 5190.14, §5C(p).) As the state's chief accountant, the comptroller is also charged with supervising the state's fiscal concerns. (Government Code, §403.011.) Proposed §2.204(f) includes a provision that allows the comptroller to grant an extension to the one-year time period the rule would impose. Therefore, the comptroller believes that Mr. Hoyte's concerns are sufficiently addressed with the language that was proposed. In answer to San Antonio's question, a disbursement request is the letter and associated documentation submitted to the comptroller for the purpose of requesting a distribution from the Event Trust Fund as described in §2.204(e). A "reimbursement request" is considered a disbursement request.

Comment: Don Hoyte comments on §2.204(g) which provides that the comptroller may request supporting documentation or justification regarding any costs submitted for reimbursement. The commenter states that any requested "justifications" cannot exceed the requirements contained in the event support contract, and further states that requiring justification for any items beyond those in the event support contract places the comptroller as both "judge and jury on a third party contract."

Response: As the agency administering the Events Trust Fund and as the state's chief accountant, the comptroller has authority to request justification for any expense or obligation the comptroller is considering for disbursement from the Events Trust Fund. Furthermore, Art. 5190.14, §5C(i) also provides that a local organizing committee, endorsing municipality, or endorsing county shall provide information required by the comptroller to enable the comptroller to fulfill the comptroller's duties, which includes the processing of disbursement requests.

Comment: Don Hoyte comments on §2.204(h)(2) which provides that the comptroller will not consider a disbursement request that requests reimbursement for costs belonging to any entity other than a requestor as a party to an event support contract. Hoyte states that this change is contrary to the intent of the statute if the rule limits reimbursement of costs borne by others for which the requesting party has agreed to seek reimbursement under the ETF program. Fort Worth states that the proposed amendment would be contrary to the intent of the Events Trust Fund statutes and contradictory to the prior history of reimbursing costs incurred by site selection organizations. With regard to this section of the rule, San Antonio asks whether the intent of this provision is to eliminate events like the Alamo Bowl where a city, as the requestor and party to an event support contract, is asking for reimbursement of the funds that the site selection organization Bowl Association pays to a conference.

Response: The statute does not contemplate the Events Trust Fund to be used to pay for third party expenses or obligations, including those of a site selection organization. Tex. Rev. Civ. Stat. Art. 5190.14, §5C(k) says, in pertinent part "The comptroller may make a disbursement from the Events trust fund...for a purpose for which a local organizing committee, an endorsing municipality, or an endorsing county or this state is obligated under an event support contract..." The statute does not authorize payment for obligations of a site selection organization or any other entity related to the event support contract. The comptroller has considered and will continue to consider reimbursement to a requestor (which is defined in §2.200(11) to include only endorsing municipalities, endorsing counties, or their authorized LOCs) for a third party's receipts only under the condition that the requestor has agreed to reimburse costs for party's receipts in order to fulfill requirements of an event support contract. These cases could constitute third-party receipts being supportive of a requestor's costs, depending on the contracts between the requestors and the third parties and how those contracts relate to a requestor's fulfillment of event support contract obligations. In all cases, proof of the requestor's obligations to reimburse those third party receipts is currently and would continue to be required for consideration. The comptroller's proposed rules apply, and are intended to apply, to all qualifying events equally. No event is specifically included or exempted from the rule's provisions. Each local government must determine how its negotiated terms in contracts for future events that may be submitted for fund participation would be impacted.

Comment: San Antonio comments on §2.204(h)(3) which states that the comptroller will not consider a disbursement request that is submitted to the comptroller more than 90 days after the end date of the event unless the comptroller has granted an extension to the requestor. The commenter asks whether the rule requires that the local contribution be made within 90 days or that the reimbursement packet with invoices and other backup be sent within the 90 day period. Don Hoyte comments that the comptroller's discretion to limit the duration of the submission of a disbursement request or to grant an exemption to that duration would result in unilateral denial of access to the Event Trust Fund, and that the extension process is vague. The Consolidated Commenters and Austin CVB request that the comptroller consider extending the amount of time allowed for submission to 180 days from the last date of the event.

Response: The comptroller proposed the submission deadline for disbursement requests because inefficiencies exist for program participants when numerous outstanding Event Trust Fund accounts exist, causing participants to experience delays in the disbursement process. The comptroller included an exemption seeking process but did not specify that process so that the process would not be limited to specified types of communications or circumstances. In response to comments, the comptroller has amended the proposed rule to allow up to 180 days after an event occurs before a participant would be required to seek an extension of the deadline.

Comment: Don Hoyte comments on §2.205(a)(7)(B) which allows reimbursement for costs of the rental of furnishings and equipment required under an event support contract which is ordered after the event support contract is signed. The commenter states that some event support contracts are finalized after the events occur, therefore making the date that an event support contract is signed as a beginning date for allowable expenses is in some cases unrealistic.

Response: The comptroller does not condone the practice of signing or amending event support contract requirements for hosting an event after the event occurs. Proposed §2.204(c)(1) would require a copy of the event support contract not later than the date of the event. To avoid any confusion, the comptroller has amended proposed §2.204(c)(1) to indicate that the complete copy of the event support contract required to be submitted to the comptroller prior to the event must be a copy of the fully executed contract.

Comment: San Antonio comments on §2.205(a)(7)(C)(iii) which would require that improvements or maintenance to publicly owned real property be ordered no earlier than three months prior to the event and that such improvements or maintenance be directly related to hosting the event. San Antonio states that the proposed rule changes would have a detrimental effect on the city's efforts to attract events. The city states that its procurement processes make the task of meeting the 90 day requirement practically impossible. The Consolidated Commenters commented that deposits and other expenses must be made by a venue earlier than 90 days prior to an event and that operating and administrative costs for events often extend before 90 days prior to an event. The Consolidated Commenters request the deletion of this provision. Don Hoyte commented that facility and administrative costs could be incurred prior to 90 days ahead of an event and should be considered eligible whenever agreements are already in place.

Response: First, the statute does not authorize use of Events Trust Funds to pay for general construction expenses that are unrelated to a specific event. The comptroller proposed the rules to ensure that only expenses directly attributable to the qualified event are submitted for consideration. However, the comptroller acknowledges that eligible costs covered by proposed §2.205(a)(4), (7) and (8) could exist prior to an event as far back as to when an event support contract is signed, and has amended those proposed paragraphs to make that acknowledgment.

Comments: Don Hoyte comments on §2.205(a)(7)(C)(iv) which allows for the reimbursement of event facility costs, including operational costs of the facility, that occur prior to or during the event unless the cost specifically relates to cleaning the facility after the event occurs. The commenter asks that the scope of the rule be expanded to include "restoration" of a facility because some events may require removal of items which goes beyond cleaning.

Response: The comptroller considers activities such as removal of rented equipment and temporary structures which were specifically installed for the event as necessary event related expenses, and therefore has amended the proposed section to permit post-event expenses for restoring the facility to its original configuration in addition to cleaning expenses.

Comment: Don Hoyte comments on §2.205(b)(4) and (9) which prohibits disbursements for alcoholic beverages and entertainment, hospitality or "VIP" expenses. Don Hoyte questioned the source of the prohibition of reimbursement for these expenses and asked whether the prohibition would extend to the use of event retainer fees or other lump sum fees paid to a third party from being used for such purposes.

Response: The comptroller is responsible for administering the Events Trust Fund program and is granted the authority for adopting rules under Tex. Rev. Civ. Stat. Art. 5190.14, §5C(p). As the state's chief accountant, the comptroller is also charged with supervising the state's fiscal concerns. (Government Code, §403.011.) The reimbursement of these costs is an inappropriate use of taxpayer funds and is not in the best interests of the program. If a retainer fee or other lump sum fee was to be paid specifically to cover the cost of these types of expenses, then those fees would not qualify under the rule as reimbursable expenses.

Comment: Consolidated Commenters comment on §2.205(b)(5)(B) relating to the prohibition against a disbursement for costs related to representing an entity in front of the comptroller for the purpose of seeking reimbursement from the trust fund. The commenters state that endorsing municipalities, counties, and LOCs are incurring significant expenses for staff time and professional services to work through the trust fund process, and such expenses should be reimbursable.

Response: While endorsing municipalities, counties, and local organizing committees may choose to hire professional services to assist in the disbursement process, the comptroller does not believe that the administrative expenses of accessing the fund are related to the statutory purposes of the fund under Art. 5190.14, Sec. 2, i.e., covering costs related to bidding for, preparing for, and conducting an event; consequently the comptroller believes no change to the rule is necessary.

Comment: The Consolidated Commenters comment on §2.205(b)(6) prohibiting disbursements for expenses related to gaming, raffles, or giveaways. The commenters state that municipalities are legally permitted to use their hotel occupancy taxes for advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality. The commenters note that the proposed rule appears to prohibit use of the Events Trust Fund for advertising and other related materials which are authorized uses of those taxes. The commenters seek clarification that the proposed rule is not intended to prohibit reimbursement of "giveaway" expenses for which a municipality could otherwise use its hotel occupancy taxes.

Response: The purpose of proposed §2.205(b)(6) was to prohibit use of the Events Trust Fund for giveaway items unrelated to bona fide advertising and promotional items. The comptroller has amended §2.205(b)(6) and included revised §2.205(a)(13) to accommodate bona fide promotional items intended for advertising. The comptroller does not agree that any eligible use

of a municipalities hotel occupancy taxes are automatically eligible uses of Events Trust Funds because such a broad definition would avoid the purpose and specific scope set in statute for use of Event Trust Funds.

Comment: Several comments were received on §2.205(b)(11) and §2.200(13) relating to various travel expenses. Austin CVB asked whether proposed §2.205(b)(11) would permit reimbursement of airfare and lodging for international sports event participants, assuming those expenses were related to a LOC's obligations in the event support contract. Don Hoyte questioned whether travel costs are limited to the costs allowable to state employees or "are they reasonable and normal business travel expenses" and suggested that the comptroller ensure that any instructions related to travel limitations are passed on to auditors who review Event Trust Fund expenses.

Response: The rule would limit reimbursement of an individual's lodging and airfare to expenses incurred under a service contract for either professional or legal service providers that meet other criteria listed in §2.205(a)(9). In all cases, the professional and legal services would have to be obligations relating to fulfilling event support contract obligations, and the professional or legal service contract with the individual would have to require that the requestor reimburse the individual's lodging and airfare as part of the contract's terms. Under the proposed rule, merely including lodging and airfare for international sports participants as obligations in an event support contract would not automatically qualify the payment of airfare or lodging for individuals. Those expenses would not automatically be disqualified, however, because international sports participants who are providing professional services under contract in conjunction with a requestor's responsibilities in the event support contract could have travel expenses reimbursed if all other criteria are met. Previously, comptroller audit staff limited reimbursement of an individual's travel expenses unrelated to service contracts by applying the state employee rate, unless the travel had been a component of a service contract. Under the proposed rules, §2.200(13) and §2.205(b)(11) would no longer permit reimbursement of an individual's travel expenses that are unrelated to a service contract or that are not in-market-area transportation or parking expenses required to be provided under an event support contract. However, the proposed rule did not explicitly indicate one of the limitations audit staff regularly apply, and would continue to apply, which is denial of tips and gratuities from any travel expense. The comptroller has amended §2.205(b)(2) to make it clear that any gratuities, which are gifts, will not be reimbursed.

Comment: Don Hoyte comments on §2.205(b)(12) prohibiting reimbursement of an expense whose cost is recouped from another entity or from revenue identified in an events support contract. The commenter requests that the comptroller insert the word "specifically" before the word "identified" in this section to make it clear that the comptroller staff and auditors are not to use a broad interpretation in applying this prohibition.

Response: The comptroller believes that no change to the rule is necessary because the rule is sufficiently specific to address the commenters' concerns.

Comment: Don Hoyte comments on §2.205(b)(14) prohibiting disbursements for damages of any kind. Mr. Hoyte states that the rule should be qualified where the damages are directly related to the physical facilities used to host the event.

Response: The comptroller believes that no change to the rule is necessary. Under proposed §2.205(a)(3), the rule would permit the comptroller to consider disbursement requests for insurance expenses when the insurance is required to be provided by a requestor under an event support contract.

Comment: Don Hoyte comments on §2.205(c) regarding the comptroller's right to deny an expense that is unnecessary or fiscally irresponsible. The commenter comments that the requirement is overly broad and asks what recourse there is for a requestor if they disagree with the comptroller's determination. Fort Worth stated a concern that the proposed rule would not allow a city to give adequate assurances to a site selection organization if it is unsure as to how the comptroller would make determinations under this section.

Response: The comptroller included §2.205(c) to cover situations where expenses not otherwise specifically identified in the rules are fiscally irresponsible, unnecessary or not supportive of program objectives. The comptroller believes that it is in the best interest of the program to be able to deny requests of this nature.

The amendments and new rule are adopted pursuant to Texas Revised Civil Statutes Annotated, Article 5190.14, §5C(p) which allows the comptroller to adopt rules to implement the provisions of Art. 5190.14, Sec. 5C, VTCS.

The rules implement Texas Revised Civil Statutes Annotated, Article 5190.14, §5C.

§2.200. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Cost--A requestor's expenses and obligations required to attract, secure, and conduct an event under the event support contract net of revenues remitted to or due to the requestor for the same specific expense or obligation.

(3) Endorsing county--A county that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(4) Endorsing municipality--A municipality that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(5) Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract signed by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization. The term does not include a request for bid, request for proposal, bid response or a selection letter from a site selection organization except as those documents may be incorporated by reference into the event support contract.

(6) Event--An event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.

(7) Highly competitive selection process--A process in which the requestor shall document that the site selection organization:

(A) has historically considered sites outside of Texas on a competitive basis and intends to do so in the future;

(B) shall not select more than one site in Texas or an adjoining state; and

(C) shall not select the site for the event more than one time in a calendar year.

(8) Local organizing committee--A nonprofit corporation or its successor that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(9) Local share--The contribution to the fund made by or on behalf of an endorsing municipality or endorsing county.

(10) Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(11) Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting to participate in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively or in conjunction with a local organizing committee.

(12) Site selection organization--An entity that conducts or considers conducting an eligible event in this state.

(13) Travel--Includes lodging, mileage, rental car expense, airfare and meals that are incurred while a person travels.

(14) Trust fund--The Events Trust Fund.

(15) Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.202. Request to Establish a Trust Fund.

(a) A request for participation in the trust fund program must contain:

(1) a letter from the municipality or county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(2) a letter from the site selection organization on organization letterhead selecting the site in the endorsing municipality or endorsing county;

(3) an economic impact study or other data sufficient for the comptroller to make the determination of the incremental increase in tax revenue associated with hosting the event in Texas including a listing of any data for any related activities;

(4) a Request Worksheet to Establish an Events Trust Fund form and any attachments; and

(5) an affidavit provided by each endorsing municipality, endorsing county, local organizing committee, and any party providing economic data to the agency in support of the request, attesting to the accuracy of the information provided to the best knowledge of the affiant.

(b) The economic impact study and other data submitted must contain detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event and for the requested market area if that data or information affects the amounts requested under the Events Trust Fund. The study must identify the source of the information. Any other data or information in the study addressing the indirect or induced impact of the event must be stated separately from the direct impact data such that the data for each can be easily distinguished.

(c) The request for participation and the economic impact report should propose the requestor's desired market area and include information to support the choice of market area. The comptroller shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(d) A list of all related event activities proposed to be included in the trust fund estimate must include data for each activity, such as projected attendance figures, ticket sales, or any production or expenditure information related to the activity.

(e) The comptroller is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not later than four months before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) All requests must be submitted to: Deputy Comptroller, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774.

(h) The comptroller shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the comptroller receives the completed request for participation and related information.

(i) If the comptroller determines that the event (including any activities related to or associated with the event) has been held in the state within the previous five years, the estimated incremental increase in tax revenue will be reduced according to the following percentages, subject to adjustment to the extent the comptroller determines is necessary to reflect changes to the character, timing or location of the event: Figure: 34 TAC §2.202(i)

(j) This section applies to a request to establish a trust fund that is submitted to the comptroller on or after the date upon which this rule becomes effective. A request submitted to the comptroller prior to the effective date is governed by the rule that was in effect on the date the request was submitted.

§2.203. Reporting.

(a) After the conclusion of an event, a requestor must provide information related to the event, including attendance figures, hotel information, financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program. If available, information should include:

(1) total attendance at the event;

(2) total ticket sales for the event;

(3) number and price of tickets sold to out of state purchasers; and

(4) any other public information requested by the comptroller.

(b) Information provided under subsection (a) of this section, should only be provided if the requestor considers the information to be public.

(c) The comptroller may promulgate a form to collect information required under this section.

(d) This section applies to a request to establish a trust fund that is submitted to the comptroller on or after the date upon which this rule becomes effective. A request submitted to the comptroller prior to the effective date is governed by the rule that was in effect on the date the request was submitted.

§2.204. Disbursements for Event Costs.

(a) Disbursements from the trust fund shall be used to finance costs of the event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) the construction or renovation of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract; and

(3) conducting an event in this state in accordance with the event support contract.

(b) Disbursements from the trust fund may not be used to make payments to a site selection organization or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Disbursements are subject to verification or audit by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall submit to the comptroller:

(1) a complete and fully executed copy of the event support contract, any amendment to the contract, and any incorporated documentation;

(2) documentation affirming the participation of a local organizing committee, if one exists; and

(3) if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be allocated to an endorsing municipality or endorsing county, the request must be submitted to the comptroller no later than the date of the event with a proposed local funds withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller Form AP-152 Texas Application for Payee Identification Number for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving disbursements directly from the comptroller;

(2) the amount to be disbursed;

(3) a general explanation of the costs the disbursement request represents;

(4) copies or specifications for any publications or advertising cost included in the disbursement request;

(5) a detailed list presented in the form prescribed by the comptroller of costs included in the request;

(6) copies of the requestor's invoices, receipts, contracts, proof of payment, or other documents supporting the costs included in the disbursement request;

(7) for a request submitted by a local organizing committee, documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county;

(8) a statement indicating whether any information provided to the comptroller is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552), including the legal citation showing the exemption claimed; and

(9) a copy of any financial report the requestor is required to submit to the site selection organization under the event support contract unless a specific exemption is granted by the comptroller.

(f) Funds in the trust fund must be fully expended within one year of the date the first disbursement request is received by the comptroller unless an extension is granted by the comptroller. After this one year period and any extension period, the comptroller shall return the local share of any unexpended balances in the trust fund to the respective endorsing municipality and/or endorsing county in proportion to their initial contribution, regardless of the source of the local share. Prior to the end of this one year period plus any extension granted, the comptroller may return any local share remaining unexpended in the trust fund upon request by an endorsing municipality and/or endorsing county or after the payment of all costs is completed.

(g) The comptroller may request supporting documentation or justification regarding any costs submitted for reimbursement.

(h) The comptroller will not consider a disbursement request that:

(1) is not signed by a requestor;

(2) requests reimbursement for costs belonging to any entity other than a requestor as a party to an event support contract;

(3) is submitted to the comptroller more than 180 days after the end date of the event unless the comptroller has granted an extension to the requestor; or

(4) is not supported by an event support contract.

(i) Each disbursement request must be accompanied by a certification completed by the endorsing municipality or endorsing county.

(1) The certification required by this subsection must be in the following form: Regarding the Events trust fund disbursement request in the amount of $_____, for the _____{name of event} I, _____{name of authorized official}, approve of each cost submitted for disbursement from the trust fund. I certify that each cost is necessary to fulfill obligations under the event support contract. I certify that the funds will not be used for the purpose of soliciting the relocation of a professional sports franchise located in this state; and that no costs sought for disbursement from the trust fund are also being reimbursed by another entity. I also certify that I have the authority to make this certification statement on behalf of the municipality or county and that I take responsibility for the disbursement being requested.

(2) The certification must be signed by an official of the endorsing municipality or endorsing county who is authorized to bind the municipality or county.

(3) An endorsing municipality or endorsing county may not delegate to another person or entity its obligation to approve a disbursement request or sign the certification required by this subsection.

(j) A disbursement made from the trust fund by the comptroller in satisfaction of a requestor's obligation shall be satisfied proportionately from the state and local revenue in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by a requestor.

(k) This section applies to a disbursement request that is submitted to the comptroller on or after the date upon which this rule becomes effective. A disbursement request submitted to the comptroller prior to the effective date is governed by the rule that was in effect on the date the request was submitted.

§2.205. Allowed and Disallowed Costs.

(a) The following costs are supportive of the trust fund program goals and are generally allowable:

(1) construction and financing costs for public event facilities;

(2) fees charged by a site selection organization which must be paid as a prerequisite to holding an event, including hosting fees, sanction fees, participation fees, or bid fees;

(3) performance bonds or insurance required for hosting the event;

(4) improvements or maintenance to publicly owned real property within the designated market area that is ordered after the event support contract is signed and that is directly related to hosting the event;

(5) security or public health related costs directly incurred as a result of the event;

(6) water or food necessary to the health or safety of people or animals involved in hosting or participating in the event;

(7) event facility costs, including:

(A) expense to rent a facility if the requestor is required to provide the facility at no cost under the event support contract;

(B) the purchase or rental of furnishings and equipment specifically required to be provided under the event support contract and that is ordered after the event support contract is signed;

(C) operational costs of the endorsing municipality's or endorsing county's facility that:

(i) are directly related to preparing for or hosting the event;

(ii) are net of any rent or rent related proceeds that is received as a result of hosting the event;

(iii) occur after the event support contract is signed; and

(iv) occur prior to or during the event unless the cost specifically relates to restoring the facility to its original configuration or cleaning the facility after the event occurs.

(8) A requestor's staffing costs directly attributable to planning for or hosting the event that:

(A) are directly related to preparing for or hosting the event;

(B) are for a service that is not usually performed by the staff other than because the event is occurring;

(C) occur after the event support contract is signed; and

(D) occur prior to or during the event.

(9) a requestor's legal or professional service costs not prohibited under subsection (b)(5) of this section for:

(A) preparing a pre-event or post-event economic impact study;

(B) preparing event-related documents;

(C) fulfilling specific obligations of the event support contract;

(D) consulting on soliciting, preparing or hosting the event;

(10) market-area transportation and/or parking services for the event that are net of revenues earned from providing the transportation and/or parking;

(11) temporary signs and banners, when required by the event support contract;

(12) advertising for the event which:

(A) include the event name, date, and location; and

(B) are required by the event support contract;

(13) promotional items that:

(A) are created specifically to advertise the event;

(B) are distributed to members of the general public from locations likely to attract out-of-state visitors to the event;

(C) include the event name, date, and location; and

(D) are required by the event support contract;

(14) costs attributable to inclement weather occurring immediately before, during, or immediately after an event, except costs of damages;

(15) any other direct costs resulting from requirements of the event support contract that are not prohibited in subsection (b) of this section; and

(16) other costs determined by the comptroller to meet program objectives.

(b) Disbursements for the following costs are prohibited, regardless of their inclusion in an event support contract:

(1) any tax listed in Texas Revised Civil Statutes, Article 5190.14, Section 5C;

(2) gifts of any kind, including tips or gratuities;

(3) grants to any person, entity or organization;

(4) alcoholic beverages;

(5) costs related to representing any entity, including a requestor, in front of:

(A) the legislature for any reason; or

(B) the comptroller for the purpose of seeking reimbursement from the trust fund;

(6) expenses related to:

(A) gaming;

(B) raffles; or

(C) giveaways that do not meet the requirements of subsection (a)(13) of this section.

(7) expenses for religious items or religious publications of any kind, regardless of the religion or type of event;

(8) personal items and services;

(9) entertainment, hospitality or "VIP" expenses;

(10) food not specifically authorized in subsection (a)(6) of this section;

(11) individual's travel expenses not specifically authorized in subsection (a)(10) of this section, or that are not a component of a service contract under subsection (a)(9) of this section;

(12) reimbursement of any particular expense or obligation that was recouped or that will be recouped from another entity or from revenue earned under the event support contract that is identified to cover the cost;

(13) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(14) damages of any kind; and

(15) any expenses which an endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event.

(c) The comptroller may deny a disbursement for any event, cost, expense or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives.

(d) Subsections (a) and (b) of this section apply to a disbursement request for an event whose event support contract was fully executed on or after the date upon which this rule becomes effective. A disbursement request submitted to the comptroller for an event whose event support contract was fully executed prior to the effective date is governed by the rule that was in effect on the date the event support contract was fully executed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2013.

TRD-201300475
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: February 26, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 475-0387

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PART 10. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 225. MASTER LEASE PURCHASE PROGRAM

34 TAC §225.7

The Texas Public Finance Authority (Authority) adopts amendments to §225.7, concerning the recovery of costs for the administration of the Master Lease Purchase Program (the Program). The amendments are adopted without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8442) and will not be republished.

The amended section allows the Authority the flexibility to calculate the pro rata reimbursement for each participating agency no more frequently than on a semi-annual basis. The purpose of the amendment is to provide the Authority with greater flexibility for recovering the Program costs. Furthermore, as a part of the agency's rule review under Government Code §2001.039, the Authority has determined that the reason for the rule continues to exist because the Program continues to exist.

No comments were received regarding the proposed amendments.

The amendments are adopted under the authority of Texas Government Code, Chapter 1232, which authorizes the Authority to adopt rules necessary to implement the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300518
Susan Durso
General Counsel
Texas Public Finance Authority
Effective date: February 28, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 463-3143

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.307

The Texas Commission on Fire Protection (the commission) adopts amendments to §427.307, concerning On-Site and Distance Training Provider Staff Requirements, under Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers. The amendments are adopted without changes to the proposed text as published in the December 14, 2012, *Texas Register* (37 TexReg 9759) and will not be republished.

The amendments are adopted to add specific language regarding certifications and levels of those certifications required for teaching wildland certification courses. The adopted amendments also add language requiring course leaders to be present in any class being taught.

The adopted amendments will provide clear and concise rules regarding requirements to teach wildland certification courses as well as the assurance that all instructors will carry the same qualifications for teaching the courses.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.028, which provides the commission the authority to certify persons as qualified fire protection personnel instructors.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300532
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 936-3813

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.23

The Texas Commission on Fire Protection (the commission) adopts new §441.23, concerning Continuing Education for Wildland Fire Fighter, under Chapter 441, Continuing Education. The new section is adopted without changes to the proposed text as published in the December 14, 2012, *Texas Register* (37 TexReg 9760) and will not be republished.

The new section is adopted to add specific language regarding continuing education requirements for the new Wildland Fire Fighter certificate holders that will align with other certifications the agency offers.

The adopted new section will provide clear and concise rules regarding the continuing education requirements specific to renew all Wildland Fire Fighter certifications.

No comments were received from the public regarding the adoption of the new section.

The new section is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications relating to continuing education or training programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300533
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 936-3813

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CHAPTER 449. HEAD OF A FIRE DEPARTMENT

37 TAC §449.3, §449.5

The Texas Commission on Fire Protection (the commission) adopts amendments to §449.3, Minimum Standards for Certification as Head of a Suppression Fire Department, and §449.5, Minimum Standards for Certification as Head of a Prevention Only Department, under Chapter 449, Head of a Fire Department. The amendments are adopted without changes to the proposed text as published in the December 14, 2012, *Texas Register* (37 TexReg 9761) and will not be republished.

The amendments are adopted to provide a clear and concise set of rules ensuring that Texas fire chiefs are familiar with state laws and commission rules.

The adopted amendments will ensure that all heads of departments are fully aware of the State of Texas requirements for fire service entities and fire protection personnel.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications for competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300534
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 936-3813

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) adopts new Subchapter C, Minimum Standards for Fire Officer III, §451.301, concerning Fire Officer III Certification, §451.303, concerning Minimum Standards for Fire Officer III Certification, and §451.305, concerning Examination Requirements; and

new Subchapter D, Minimum Standards for Fire Officer IV, §451.401, concerning Fire Officer IV Certification, §451.403, concerning Minimum Standards for Fire Officer IV Certification, and §451.405, concerning Examination Requirements, under Chapter 451, Fire Officer. The new sections are adopted without changes to the proposed text as published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9762) and will not be republished.

The new sections are adopted to identify specific requirements for certification as Fire Officer III and Fire Officer IV being offered by the commission.

The adopted new sections will provide a clear and concise set of rules regarding the requirements for certification that is in line with all other commission certifications in the Fire Officer rank.

There was one comment received from the Fire Instructors Association of North Texas (FIANT). The association requested the examination requirement be waived for up to one calendar year for individuals who have already obtained the necessary education requirements seeking certification of Fire Officer III and Fire Officer IV. The commission disagreed due to the fact that the requirement for testing is consistent with typical commission procedures when a new certification is offered, and that the decision by the commission to waive the examination requirement for the recent Wildland and Incident Safety Officer certifications was due to unusual circumstances. In order to maintain the professional integrity of this and other certifications, the commission feels that individuals should successfully complete an exam process. Additionally, it was stated that in order for the commission to issue International Fire Service Accreditation Congress (IFSAC) seals, there must be a test.

SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §§451.301, 451.303, 451.305

The new sections are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300535
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 936-3813

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SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

37 TAC §§451.401, 451.403, 451.405

The new sections are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300536
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 936-3813

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CHAPTER 453. HAZARDOUS MATERIALS

The Texas Commission on Fire Protection (the commission) adopts amendments to §453.3, Minimum Standards for Hazardous Materials Technician Certification, §453.5, Examination Requirements, and §453.7, International Fire Service Accreditation Congress (IFSAC) Seal under Chapter 453, Subchapter A, concerning Minimum Standards for Hazardous Materials Technician. The commission also adopts new §453.201, Hazardous Materials Incident Commander Certification, §453.203, Minimum Standards for Hazardous Materials Incident Commander, and §453.205, Examination Requirements, under new Subchapter B, concerning Minimum Standards for Hazardous Materials Incident Commander. Sections 453.3, 453.5, 453.7, and 453.205 are adopted without changes to the proposal as published as published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9764) and will not be republished. New §453.201 and §453.203 are adopted with changes and will be republished. The commission changes the title of Chapter 453 to Hazardous Materials as well.

The amendments and new sections are adopted to establish the requirements for certification as a Hazardous Materials Incident Commander as well as to clearly delineate the duties of a Hazardous Materials Technician versus the duties of a Hazardous Materials Incident Commander.

The adopted amendments and new sections will provide a clear and concise set of rules regarding requirements for certification as a Hazardous Materials Technician and Hazardous Materials Incident Commander.

No comments were received from the public regarding the adoption of the amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §§453.3, 453.5, 453.7

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority

to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300537
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 936-3813

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SUBCHAPTER B. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS INCIDENT COMMANDER

37 TAC §§453.201, 453.203, 453.205

The new sections are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

§453.201. Hazardous Materials Incident Commander Certification.

The Hazardous Materials Incident Commander is defined as that person responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources.

§453.203. Minimum Standards for Hazardous Materials Incident Commander.

(a) In order to be certified as Hazardous Materials Incident Commander an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Hazardous Materials Incident Commander; or

(3) complete a commission approved Hazardous Materials Incident Commander program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Hazardous Materials Incident Commander program must consist of one of the following:

(A) completion of a commission approved Hazardous Materials Incident Commander curriculum as specified in Chapter 6 of the commission's Certification Curriculum Manual.

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to, or exceeds the commission approved Hazardous Materials Incident Commander curriculum.

(4) Special temporary provision: Within one year following the effective date of this rule, an individual is eligible to take the commission examination for Hazardous Materials Incident Commander upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 472, Chapter 8. The documentation must be a certificate of completion from a nationally recognized training provider. During the one-year period, the commission examination shall consist of a written exam. The examination requirements in §453.205(b) of this subchapter (relating to Examination Requirements) must still be met. This paragraph expires one year from the effective date of this rule.

(5) The application processing fee for the initial examination is waived for individuals in paragraphs (3) and (4) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 6 (pertaining to Hazardous Materials Incident Commander) of the commission's Certification Curriculum Manual are met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2013.

TRD-201300538
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2013
Proposal publication date: December 14, 2012
For further information, please call: (512) 936-3813

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 101, Assessment, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 101 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments; Subchapter BB, Commissioner's Rules Concerning Grade Advancement and Accelerated Instruction; Subchapter CC, Commissioner's Rules Concerning Implementation of Academic Content Areas Testing Program; Subchapter DD, Commissioner's Rules Concerning Alternative Exit-Level Assessments; Subchapter EE, Commissioner's Rules Concerning the Statewide Testing Calendar and UIL Participation; and Subchapter FF, Commissioner's Rules Concerning Diagnostic Assessment.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 101, Subchapters AA-FF, continue to exist.

The public comment period on the review of 19 TAC Chapter 101, Subchapters AA-FF, begins February 22, 2013, and ends March 25, 2013. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201300610
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 13, 2013

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §329.2(b)(2)(C)

ADDITIONAL EDUCATION REQUIREMENTS
FOR LICENSURE APPLICANTS WHO FAIL THE NATIONAL EXAMINATION

Requirements based on: 1) number of failures AND 2) exam score (passing = 600)		Tutorial Hour Requirements	CCU Requirements
A. Applicants who fail the exam 2 or 3 times			
PT.....599 - 586	PTA.....599 - 584	25 hours tutorial	15 CCUs
PT.....585 - 566	PTA.....583 - 560	40 hours tutorial	20 CCUs
PT.....565 & below	PTA.....560 & below	80 hours tutorial	40 CCUs
B. Applicants who fail the exam 4 times			
PT.....599 - 586	PTA.....599 - 584	50 hours tutorial	30 CCUs
PT.....585 - 566	PTA.....583 - 560	80 hours tutorial	40 CCUs
PT.....565 & below	PTA.....560 & below	160 hours tutorial	80 CCUs
C. Applicants who fail the exam 5, 6, or 7 times			
PT.....599 - 586	PTA.....599 - 584		60 CCUs
PT.....585 - 566	PTA.....583 - 560		90 CCUs
PT.....565 & below	PTA.....560 & below		150 CCUs
D. Applicants who fail the exam 8 or more times must repeat an accredited PT or PTA program.			

Figure: 25 TAC §289.227(e)(18)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \overline{X})^2}{n-1}\right]^{1/2}$$

where : s = estimated standard deviation of the population

$\overline{X}$ *= mean value of observations in sample*

X_i *= ith observation in sample*

n = number of observations in sample

Figure: 25 TAC §289.227(j)

TABLE I - RADIOGRAPHIC ENTRANCE EXPOSURE LIMITS
(AIR KERMA LIMITS)

Examination	Patient Thickness (cm)	Exposure Limit (Air Kerma Limit)	
		(mR)	(mGy)
PA Chest (Non-Grid)	23	20	(0.2)
PA Chest (Grid)	23	30	(0.3)
Abdomen (KUB)	23	450	(4.5)
Lumbo-Sacral Spine (AP)	23	550	(5.5)
Cervical Spine (AP)	13	120	(1.2)
Thoracic Spine (AP)	23	325	(3.25)
Full Spine	23	300	(3.0)
Skull (lateral)	15	150	(1.5)
Foot (DP)	8	50	(0.5)

Figure: 25 TAC §289.227(k)(4)(A)(i)

TABLE II - HALF-VALUE LAYER FOR SELECTED kVp

X-ray Tube Voltage (kilovolt peak)		Minimum HVL (mm of aluminum)	
Designed operating range	Measured operating potential	X-ray systems manufactured before June 10, 2006	X-ray systems manufactured on or after June 10, 2006
Below 51	30	0.3	0.3
	40	0.4	0.4
	50	0.5	0.5
51 to 70	51	1.2	1.3
	60	1.3	1.5
	70	1.5	1.8
Above 70	71	2.1	2.5
	80	2.3	2.9
	90	2.5	3.2
	100	2.7	3.6
	110	3.0	3.9
	120	3.2	4.3
	130	3.5	4.7
	140	3.8	5.0
	150	4.1	5.4

Figure: 25 TAC §289.227(l)(5)

$$\left|\overline{X}_1 - \overline{X}_2\right| \leq 0.10\left(\overline{X}_1 + \overline{X}_2\right)$$

Figure: 25 TAC §289.227(o)(1)

Type of Machine	**Frequency**
CT	Annually not to exceed 14 months from the date of prior EPE
Fluoroscopy	Annually not to exceed 14 months from the date of prior EPE
Radiographic Podiatric use only	4 years from the date of prior EPE
All other Radiographic	2 years from the date of prior EPE

Figure: 25 TAC §289.227(s)(1)

Name of Record/Document		Rule Cross Reference	Time Interval for Keeping Records
(A)	Current 25 TAC §§289.203, 289.204, 289.205, 289.226, 289.227, and 289.231	As listed on certificate of registration	Until termination of registration
(B)	Current certificate of registration	§289.203(b)(1)(B)	Until termination of registration
(C)	Notice of violation from last inspection, if applicable	§289.203(b)(1)(D)	Until next agency inspection
(D)	Documentation of correction of any violations	§289.203(b)(1)(D)	Until next inspection
(E)	Annual Radiation Machine Inventory	§289.226(m)(1)(B)	3 years
(F)	Receipt, transfer, and disposal	§289.226(m)(1)(D)	Until termination of registration
(G)	Records of training and experience	§289.226(m)(4)	Until termination of registration or 5 years after personnel leave the facility
(H)	FDA variances on x--ray systems	§289.227(h)	Until termination of registration
(I)	Current operating and safety procedures	§289.227(i)(2)	Until termination of registration
(J)	Protective devices annual check	§289.227(i)(4)(B)	3 years
(K)	Credentials of individuals operating radiation machines	§289.227(i)(5)	Until 2 years after the individual leaves that facility
(L)	Records of dosimetry system Calibrations	§289.227(i)(14)	5 years
(M)	Records of maintenance and repairs of radiation machines	§289.227(l)(7) and (8) and (o)(4)	5 years
(N)	Entrance exposure rate (air kerma rate) /fluoroscopy	§289.227(m)(3)(D)	10 years
(O)	Records of Radiation Protocol Committee for FGI and CT procedures		
	(i) meeting minutes	§289.227(m)(9)(A)(ii) §289.227(n)(6)(A)(ii)	5 years
	(ii) protocol revisions	§289.227(m)(9)(C)(ii) §290.227(n)(6)(C)(ii)	5 years
(P)	Records of radiation safety awareness training for physicians	§289.227(m)(9)(E)(vi)	As long as the physician performs FGI procedures
(Q)	CT films resulting from quality control tests	§289.227(n)(5)	10 years
(R)	Equipment performance evaluations and corrections	§289.227(o)(3) and (o)(4)(B)	10 years
(S)	Film processing records and corrections	§289.227 (p)(2), (3), (5), and (6)	3 years
(T)	Alternate processing system records	§289.227(q)	3 years
(U)	Digital imaging acquisition system records	§289.227(r)	3 years
(V)	Personnel monitoring records	§289.231(m)	Until termination of registration

Figure: 31 TAC §57.378

Common Name	Scientific Name
Gars	Lepisosteus spp. and Atractosteus spp.
Bowfin	Amia calva
Shads	Dorosoma spp.
Common carp	Cyprinus carpio
Goldfish	Carassius auratus
Grass carp	Ctenopharyngodon idella
Bighead carp	Hypophthalmichthys nobilis
Suckers (buffalo)	Ictiobus spp.
River carpsucker	Carpiodes carpio
Bullhead catfishes	Ameiurus spp.
Freshwater drum	Aplodinotus grunniens
Tilapia	Oreochromis spp.
Rio Grande cichlid	Cichlasoma cyanoguttatum
Silversides	Menidia beryllina and Membras martinica
Mullet	Mugil spp.
Minnows	Campostoma spp., Cyprinella spp., Hybognathus spp. Macrhybosis spp., Notemigonus spp., Notropis spp., Opsopoedus sp., Phenacobius sp., Pimephales spp., Rhinichthys sp., and Semotilus spp.

Note: Hybrids among species listed above may also be sold.

Figure: 31 TAC §57.981(c)(5)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	34	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white.	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30*
*Special Regulation: One black drum over 52 inches may be retained per day as part of the five-fish bag limit.			
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	5*	14	No limit

*Special Regulation: During the month of November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two.			
Gar, alligator.*	1	No limit	No limit
*Special Regulation: Between May 1 and May 31 no person shall take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the IH 35 bridge.			
Grouper, gag.	2	22	No limit
Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special Regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish.	No limit	84	No limit
Saugeye.	3	18	No limit
Shark: all species, their hybrids, and subspecies other than Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	64	No limit
Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	24	No limit
*Special Regulation: The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time: Atlantic angel, Basking, Bigeye sand tiger, Bigeye sixgill, Bigeye thresher, Bignose, Caribbean reef, Caribbean sharpnose, Dusky, Galapagos, Longfin mako, Narrowtooth, Night, Sandbar, Sand tiger, Sevengill, Silky, Sixgill, Smalltail, Whale, and White.			
Sheepshead.	5	15	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.			
Snapper, vermilion.	No limit	10	No limit

Snook.	1	24	28
Tarpon.	1	85	No limit
Triggerfish, gray.	20	16	No limit
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Tripletail.	3	17	No limit
Walleye.	5*	No limit	No limit
*Special Regulation: Two walleye of less than 16 inches may be retained per day.			

Figure: 31 TAC §57.981(d)(1)

Species and Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
In all waters in the Lost Maples State Natural Area (Bandera).	0	No limit	Catch and release only.
Bass: largemouth and spotted.			
Lake Alan Henry.	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Caddo Lake (Marion and Harrison).	8 (in any combination with spotted bass)	14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.	It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.
Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby).	8 (in any combination with spotted bass)	14 (largemouth bass); no limit for spotted bass.	Possession limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), and Ratcliff (Houston).	5	16	

Lakes Kurth (Angelina) and Nacogdoches (Nacogdoches).	5		It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.
Lakes Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Naconiche (Nacogdoches), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus).	5	18	

Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No limit	Catch and release and only.
Lake Jacksonville (Cherokee) and O.H. Ivie Reservoir (Coleman, Concho, and Runnels).	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No limit	Catch and release only except that any bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.
Lakes Bridgeport (Jack and Wise), Burke- Crenshaw (Harris), Davy Crockett (Fannin), Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan).	5	14 - 18 inch slot limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.

Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Kyle (Hays), Lady Bird (Travis) Mill Creek (Van Zandt), Murvaul (Panola), Pinkston (Shelby), Timpson (Shelby), Walter E. Long (Travis) and Wheeler Branch (Somervell).	5	14 - 21 inch slot limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), and Monticello (Titus).	5	14 - 24 inch slot limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins).	5	16 - 24 inch slot limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls, and Wheeler Branch (Somervell).	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 inch slot limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.

Bass: striped and white bass, their hybrids, and subspecies.			
Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby).	5	No limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white.			

Lakes Caddo (Harrison and Marion), Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge.	25	No limit	
Carp: common.			
Lady Bird Lake (Travis).	No limit	No limit	It is unlawful to retain more than one common carp of 33 inches or longer per day.
Catfish: blue.			
Lakes Lewisville (Denton), Richland-Chambers (Freestone and Navarro), and Waco (McLennan).	25 (in any combination with channel catfish)	30-45-inch slot limit	It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

Lakes Caddo (Harrison and Marion), Kirby (Taylor), Palestine (Cherokee, Anderson, Henderson, and Smith), and Toledo Bend (Newton, Sabine, and Shelby), Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge.	50 (in any combination)	No limit	No more than five catfish 20 inches or greater in length may be retained each day. Possession limit is 50.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	No more than one blue catfish 30 inches or greater in length may be retained each day.
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam.	5 (in any combination)	No limit	
Community fishing lakes.	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead.			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	

Lakes Caddo (Harrison and Marion), Toledo Bend (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to the I.H. 10 bridge.	10	18	Possession limit is 10.
Crappie: black and white crappie, their hybrids and subspecies.			
Caddo Lake (Harrison and Marion), Toledo Bend Reservoir (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to the I.H. 10 bridge.	25 (in any combination)	No limit	
Lake Fork (Wood, Rains, and Hopkins) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleto Creek Reservoir (Goliad and Victoria), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Shad, gizzard and threadfin.			
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No limit	Possession limit 1,000 in any combination.

Trout: rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

Figure: 31 TAC §57.981(d)(2)

Species	Daily Bag	Minimum Length (Inches)	Special Regulation
Seatrout, spotted.			
All inside waters of the Lower Laguna Madre south of marker 21.	5*	15	25**
*Special Regulation: The daily bag limit of 5 is the possession limit allowed for spotted seatrout. **Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			

Figure: 31 TAC §57.992(b)(4)

Species and Location	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	34	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)*	14	No limit
*Special Regulation: In Lake Livingston (Polk, San Jacinto, Trinity, and Walker counties), the daily bag limit for channel and blue catfish is 50 in any combination. In lakes lying totally within a state park and community fishing lakes, the daily bag limit for channel and blue catfish is five in any combination.			
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Drum, black.	No limit	14	30
Flounder: all species, their hybrids, and subspecies.	30*	14	No limit
*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 30 flounder, except on board a licensed commercial shrimp boat. During the month of November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two.			
Gar, alligator.*	1	No limit	No limit
*Special Regulation: Between May 1 and May 31 no person shall take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the IH 35 bridge.			
Grouper, gag.	2	22	No limit
Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Shad: gizzard and threadfin.	No limit	No limit	No limit*
*In the Trinity River below Lake Livingston in Polk and San Jacinto counties, the daily bag for shad is 500 and the possession limit is 1,000 fish in any combination.			

Shark: all species, their hybrids, and subspecies other than Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	64	No limit
Atlantic sharpnose, blacktip, and bonnethead sharks.	1*	24	No limit
*Special Regulation: The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time: Atlantic angel, Basking, Bigeye sand tiger, Bigeye sixgill, Bigeye thresher, Bignose, Caribbean reef, Caribbean sharpnose, Dusky, Galapagos, Longfin mako, Narrowtooth, Night, Sandbar, Sand tiger, Sevengill, Silky, Sixgill, Smalltail, Whale, and White.			
Sheepshead.	No limit	15	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.			
Snapper, vermilion.	No limit	10	No limit
Triggerfish, gray.	20	16	No limit
Tripletail.	3	17	No limit

Figure: 34 TAC §2.202(i)

Number of Years the Event was Held in Texas in Last Five Years	Percent of Revenue Impact Used in Trust Fund Estimate
0	100.0%
1	85.5%
2	74.6%
3	66.2%
4	59.5%
5	54.1%

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: 2013 "Go Texan" Partner Program

The Texas Department of Agriculture (TDA) is accepting proposals for the 2013 GO TEXAN Partner Program (GOTEPP). GOTEPP is designed to provide matching funds for Tier 2, Tier 3 or sponsorship GO TEXAN members to market and promote their Texas agricultural products. TDA may distribute up to a total of $250,000 for project proposals that meet GOTEPP requirements and enhance the TDA's GO TEXAN Program.

Eligibility. Only project requests submitted by applicants who are physically located in Texas or who have their principal place of business in Texas shall be funded. An eligible applicant must be a current GO TEXAN Program Tier 2, 3 or sponsorship member and:

(1) a state or regional organization or board that promotes the marketing and sale of Texas agricultural products and does not stand to profit directly from specific sales of agricultural commodities;

(2) a cooperative organization, consisting of a group of five or more individuals who produce or market agricultural products in the state and associate to achieve common goals by registering with the Secretary of State's Office;

(3) a state agency or board that promotes the marketing and sale of agricultural commodities;

(4) a national organization or board that represents Texas producers and promotes the marketing and sale of Texas agricultural products;

(5) a small business - a legal agricultural entity, including a corporation, partnership, or sole proprietorship that:

(A) is formed for the purpose of making a profit; and

(B) has fewer than 50 full-time employees or less than $1 million in annual gross receipts;

(6) any other entity or business, other than a business meeting the definition of small business, that promotes the marketing and sale of Texas agricultural products;

(7) retailer/distributors, if:

(A) 70% of their agricultural products are sourced from Texas;

(B) 70% of their products are sourced from GO TEXAN members; or

(C) 70% of their participating businesses, companies, or members and/or vendors are GO TEXAN members, other than associate or retail members.

Submitting an Application. Applications must be submitted on the form provided by TDA by the submission deadline. Application form GTBD-101 is available on TDA's website at www.gotexan.org or upon request from TDA by calling (512) 463-6908.

Submit one (1) complete, hard copy application with original signature original and 12 copies of the full proposal for the GOTEPP Advisory Board to review. DO NOT BIND.

The complete application packet (original and 12 copies) must be **received by Wednesday, March 20, 2013.** It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. In order for the grant proposal to be accepted for review, TDA must receive the original application. **A scan or fax of the application will not be accepted.**

Complete applications with signature must be submitted to:

Physical Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TDA will send an acknowledgement receipt by email indicating the response was received.

The applicant is also required to submit the Project Narrative by email in a Microsoft Word (.doc, .docx) or Adobe Acrobat (.pdf), but whichever format is used, the text copy function must be operational. Electronic versions should be emailed to Grants@TexasAgriculture.gov.

Additional information about the GOTEPP funding opportunity, the complete RFP and application are available on TDA's website at www.gotexan.org.

Assistance and Questions. For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201300502
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: February 7, 2013

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Department of Assistive and Rehabilitative Services

Application for Early Childhood Intervention Federal Funding

The Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services is soliciting comments related to its annual application for funding under the Individuals with Disabilities Education Act, Part C. The annual funding application will be submitted to the U.S. Department of Education, Office of Special Education Programs on April 22, 2013. The application will be posted on the DARS web site at: http://www.dars.state.tx.us.

The Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services is providing an opportunity to comment on the application from February 18, 2013 until 5:00

p.m. on April 18, 2013. To request copies of the application or submit comments, please contact:

Texas Department of Assistive and Rehabilitative Services Division for Early Childhood Intervention Services, Mail Code 3029, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, ECI.policy@dars.state.tx.us.

TRD-201300505
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: February 8, 2013

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Comptroller of Public Accounts

Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces the award of a Financial Advisor contract to George K. Baum & Company (Contractor), 8117 Preston Road, Suite 300, Dallas, Texas 75225, under Request for Proposals (RFP) No. 206a. The total amount of the contract is $48,475.00 per Note issuance plus $7,500.00 for approved expenses. The term of the contract is February 6, 2013 through August 31, 2015.

The Contractor will provide financial advisor services to Comptroller for Tax and Revenue Application Notes (TRAN) issuances.

The notice of the RFP was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8872).

TRD-201300506
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: February 8, 2013

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Notice of Request for Proposals

Pursuant to Chapter 54, Subchapters F, G, H, and I of the Texas Education Code and Chapter 2254, Subchapter A of the Texas Government Code, the Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 206c ("RFP") for Certified Public Accounting Services. The Board desires to obtain the services of a qualified, independent certified public accountant to assist the Board in performing a financial audit of the Texas Guaranteed Tuition Plan, the direct-sold Texas College Savings Plan®, the advisor-sold LoneStar 529 Savings Plan®, and the Texas Tuition Promise Fund® all of which are qualified tuition programs organized under §529 of the Internal Revenue Code along with the Texas Match the Promise Foundation®, the Texas Prepaid Scholarship Fund, and the Savings Trust Account Settlement Account, referred to collectively as the Texas Tomorrow Funds ("Funds"). If approved by the Board, the successful respondent(s), if any, will be expected to begin performance of the contract May 20, 2013, or as soon thereafter as practical.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: http://esbd.cpa.state.tx.us on Friday, February 22, 2013, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Jennifer W. Sloan, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 936-6054.

Questions: All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, March 8, 2013. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, March 15, 2013, Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFP.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, April 5, 2013. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from the RFP. Comptroller and the Board reserve the right to accept or reject any or all proposals submitted. Comptroller and the Board are not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 22, 2013, after 10:00 a.m. CT; Questions Due - Friday, March 8, 2013, 2:00 p.m. CT; Official Responses to Questions posted - Friday, March 15, 2013, or as soon thereafter as practical; Proposals Due - Friday, April 5, 2013, 2:00 p.m. CT; Board interviews, if any - May 14, 2013, or as soon thereafter as practical; Contract Execution - May 15, 2013, or as soon thereafter as practical; and Commencement of Project Activities - on or after May 20, 2013. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal.

TRD-201300609
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: February 13, 2013

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Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Texas Finance Code §341.203.[1]

The amounts of brackets in Texas Finance Code §342.201(a) are changed to $1,980.00 and $16,500.00, respectively.

The amounts of brackets in Texas Finance Code §342.201(e) are changed to $3,300.00, $6,930.00, and $16,500.00, respectively.

The ceiling amounts in Texas Finance Code §342.251 and §342.259 are changed to $660.00 and $1,320.00, respectively.

The amounts of the brackets in Texas Finance Code §345.055 are changed to $3,300.00 and $6,600.00, respectively.

The amount of the bracket in Texas Finance Code §345.103 is changed to $3,300.00.

The ceiling amount of Texas Finance Code §371.158 is changed to $16,500.00.

The amounts of the brackets in Texas Finance Code §371.159 are changed to $198.00, $1,320.00, and $1,980.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2013, and extending through June 30, 2014.

[1] Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2012 Index = 672.854. The percentage of change is 662.26%. This equates to an increase of 660% after disregarding the percentage of change in excess of multiples of 10%.

TRD-201300580
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 11, 2013

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/18/13 - 02/24/13 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/18/13 - 02/24/13 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201300581
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 11, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is March 25, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on March 25, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 2000 IIG, INCORPORATED dba Diamond Super Mart 2; DOCKET NUMBER: 2012-1766-PST-E; IDENTIFIER: RN101801157; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $6,600; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: A. & P. WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-2183-PWS-E; IDENTIFIER: RN101216521; LOCATION: Carthage, Panola County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(D) and TCEQ AO Docket Number 2009-1208-PWS-E, Ordering Provision (OP) Number 2.a.ii., by failing to restrict livestock from occupying land within 50 feet of a water supply well; and 30 TAC §290.43(c)(8) and TCEQ AO Docket Number 2009-1208-PWS-E, OP Number 2.c.ii., by failing to maintain the facility's 4,000 gallon ground storage tank in strict accordance with American Water Works Association requirements; PENALTY: $2,728; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: ADAMS FOOD MART, INCORPORATED dba D S Texaco; DOCKET NUMBER: 2012-2244-PST-E; IDENTIFIER: RN102267028; LOCATION: Temple, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3745(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,380; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: ALAMO CONCRETE PRODUCTS COMPANY; DOCKET NUMBER: 2012-2356-AIR-E; IDENTIFIER: RN102177821; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: concrete production plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review (NSR) Permit Number 45614, Special Conditions (SC) Numbers 2, 5.B, and 5.G, by failing to maintain all abatement

systems in good working order and by failing to prevent visible fugitive emissions from leaving the property; and 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 45614, SC Number 1, by failing to comply with the concrete production limit of 20,000 cubic yards based on a rolling 12-month period; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: ASMR FAMILY, L.L.C. dba Sun Mart; DOCKET NUMBER: 2012-2148-PST-E; IDENTIFIER: RN102231396; LOCATION: Killeen, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $6,694; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Balraj Singh dba Angel Stop; DOCKET NUMBER: 2012-2102-PST-E; IDENTIFIER: RN101432466; LOCATION: Liberty, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,638; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Bollinger Texas City, L.P.; DOCKET NUMBER: 2012-2328-IWD-E; IDENTIFIER: RN100218627; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: marine vessel and barge manufacturing and repair facility with an associated sanitary package plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004824000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Number 003, by failing to comply with permitted effluent limits; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Bridgestone Retail Operations, LLC; DOCKET NUMBER: 2012-2452-EAQ-E; IDENTIFIER: RN103008090; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: automotive parts retail sales store; RULE VIOLATED: 30 TAC §213.4(k) and Water Pollution Abatement Plan (WPAP) 11-99072102, Standard Condition (SC) Number 17, by failing to annually inspect the sedimentation/filtration water quality pond, as specified in the WPAP; and 30 TAC §213.4(k) and WPAP 11-99072102, SC Number 17, by failing to maintain the best management practices; PENALTY: $1,863; Supplemental Environmental Project offset amount of $745 applied to Austin Parks Foundation - Restoration and Rehabilitation of the Barton Springs Pool Bypass Tunnel; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(9) COMPANY: City of Alto; DOCKET NUMBER: 2012-1109-MWD-E; IDENTIFIER: RN101721363; LOCATION: Alto, Cherokee County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010546001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0010546001, Monitoring and Reporting Requirements Number 1, by failing to monitor effluent at the intervals specified in the permit; PENALTY: $7,500; Supplemental Environmental Project offset amount of $6,000 applied to Replace Fine Bubble Diffusers in Aeration Basin; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: City of Blanco; DOCKET NUMBER: 2012-1453-MWD-E; IDENTIFIER: RN101721504; LOCATION: Blanco, Blanco County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010549002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1), and TPDES Permit Number WQ0010549002, Permit Conditions Number 2.d. and Sludge Provisions, by failing to dispose of sludge at a TCEQ authorized land application site or co-disposal landfill; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010549002, Monitoring and Reporting Requirements Number 7(c), by failing to report in writing effluent violations which deviate from the permitted limit by more than 40% to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: $36,063; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(11) COMPANY: City of Splendora; DOCKET NUMBER: 2012-2224-PWS-E; IDENTIFIER: RN101176717; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(i), by failing to collect a set of repeat distribution samples within 24 hours of being notified of a total coliform-positive result; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *escherichia coli* sample from the facility's four wells within 24 hours of being notified of a distribution total coliform-positive result on a routine sample during the month of March 2012; 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of September 2012; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: $1,485; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Stephenville; DOCKET NUMBER: 2012-2050-PST-E; IDENTIFIER: RN102017308; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST; PENALTY: $2,813; Supplemental Environmental Project offset amount of $2,251 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Weslaco; DOCKET NUMBER: 2012-2105-MWD-E; IDENTIFIER: RN101607943; LOCATION: Weslaco, Hidalgo County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010619003, Interim II Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $9,300; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: Cryovac, Incorporated; DOCKET NUMBER: 2012-1800-AIR-E; IDENTIFIER: RN100212232; LOCATION: Iowa Park, Wichita County; TYPE OF FACILITY: manufactured plastic food packaging materials; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Permit Number 2380, Special Conditions Number 10.C.(1), Federal Operating Permit (FOP) Number O3383, Special Terms and Conditions Number 5, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a proposed sampling plan for the Regenerative Thermal Oxidizer (RTO), within 30 days after initial startup, which led to a delay in sampling RTO; and 30 TAC §122.143(4) and §122.145(2), FOP Number O3383, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a complete and accurate deviation report within the required time frame; PENALTY: $4,938; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Custom Crates & Pallets Management, L.L.C.; DOCKET NUMBER: 2012-1739-AIR-E; IDENTIFIER: RN105978712; LOCATION: Canutillo, El Paso County; TYPE OF FACILITY: pallet construction and refurbishment; RULE VIOLATED: 30 TAC §101.4, AO Docket Number 2011-1521-AIR-E, Ordering Provisions Number 2.a., and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent dust emissions from causing or contributing to nuisance conditions on surrounding properties; PENALTY: $3,125; Supplemental Environmental Project offset amount of $1,562 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(16) COMPANY: DOUBLEKEY CROWN CORPORATION dba Felders Texaco; DOCKET NUMBER: 2012-1957-PST-E; IDENTIFIER: RN101674810; LOCATION: Hearne, Robertson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,813; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: DRIFTWOOD EQUITIES, LTD.; DOCKET NUMBER: 2012-2159-MWD-E; IDENTIFIER: RN101608255; LOCATION: Driftwood, Hays County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014235001, Effluent Limitations and Monitoring Requirements A, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; and TPDES Permit Number WQ0014235001, Monitoring Requirements Number 7.c., and 30 TAC §305.125(1), by failing to submit noncompliance notifications for any effluent violation which deviates from the permitted effluent limitation by greater than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: $7,901; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(18) COMPANY: E - Z INTERNATIONAL, INCORPORATED dba E - Z Mart #9; DOCKET NUMBER: 2012-2206-PST-E; IDENTIFIER: RN102474186; LOCATION: Spring, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,438; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: FLOMOT WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-1534-PWS-E; IDENTIFIER: RN102317849; LOCATION: Flomot, Motley County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of quarterly nitrate sampling to the executive director; 30 TAC §290.106(e) and §290.113(e), by failing to provide the results of triennial sampling for metals, minerals, asbestos, and disinfectant byproduct contaminant levels to the executive director; 30 TAC §290.107(e), by failing to provide the results of sexennial volatile organic contaminants sampling to the executive director; 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct routine coliform monitoring during the month of June 2011; 30 TAC §290.106(g)(1) and §290.122(f), by failing to provide public notification regarding the exceedance of the Maximum Contaminant Level of nitrate during the first quarter of 2011; 30 TAC §290.106(c)(4), by failing to provide the results of sexennial cyanide sampling to the executive director; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: $1,090; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(20) COMPANY: GAMS, INCORPORATED dba Kingsville Food Mart; DOCKET NUMBER: 2012-2075-PST-E; IDENTIFIER: RN102044476; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $3,885; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Greif Packaging LLC; DOCKET NUMBER: 2012-2201-AIR-E; IDENTIFIER: RN102079662; LOCATION: La Porte, Harris County; TYPE OF FACILITY: steel drum manufacturing plant; RULE VIOLATED: 30 TAC §122.145(2)(C) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O-3107, General Terms and Conditions (GTC), by failing to submit the semi-annual deviation reports no later than 30 days after the end of the reporting period; and 30 TAC §122.146(2) and §122.143(4), THSC, §382.085(b), and FOP Number O-3107, GTC, by failing to submit the permit compliance certifications no later than 30

days after the end of the certification period; PENALTY: $18,600; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Heimco, Incorporated dba Fishermans One Stop; DOCKET NUMBER: 2012-2511-PST-E; IDENTIFIER: RN101722197; LOCATION: Yantis, Wood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,508; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Hugh L. Baker and Danny Talbot dba Dannys Phillips 66; DOCKET NUMBER: 2012-2350-PST-E; IDENTIFIER: RN102220548; LOCATION: Crosby, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,883; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Huntsman Petrochemical LLC, Huntsman International Fuels LLC, Huntsman Propylene Oxide LLC, ISP Water Management Services LLC, and TPC Group LLC; DOCKET NUMBER: 2012-1760-IWD-E; IDENTIFIER: RN103123220; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: industrial wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000511000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 001, 003, 008, 010, and 301, by failing to comply with permitted effluent limitations; PENALTY: $36,800; Supplemental Environmental Project offset amount of $14,720 applied to Big Thicket Association - Wetland Species and Ecosystems Analysis; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: I F Y ENTERPRISES, INCORPORATED dba Super Track; DOCKET NUMBER: 2012-1858-PST-E; IDENTIFIER: RN101871598; LOCATION: Carthage, Panola County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $3,510; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: ISP Synthetic Elastomers LLC; DOCKET NUMBER: 2012-1619-AIR-E; IDENTIFIER: RN100224799; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: Federal Operating Permit (FOP) Number O1224, Special Terms and Conditions (STC) Number 12, New Source Review Permit Number 9908, Special Conditions Number 1, 30 TAC §116.115(c) and §122.143(4), and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and FOP Number O1224, STC Number 2.F., 30 TAC §101.201(a) and §122.142(4), and THSC, §382.085(b), by failing to determine if the February 1, 2011, and February 16, 2011, emission events were reportable and submit initial notifications within 24 hours after discovery; PENALTY: $20,600; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Jonathan Law dba Roosters Orange Bar; DOCKET NUMBER: 2012-2116-PWS-E; IDENTIFIER: RN101197325; LOCATION: Santa Fe, Galveston County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(1)(A) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute Maximum Contaminant Level (MCL) for fecal coliform and *escherichia coli;* and 30 TAC §290.109(f)(3) and THSC, §341.031(a), by failing to comply with the MCL for total coliform; PENALTY: $714; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: KAMIL ENTERPRISES, INCORPORATED dba Mega Royal Mart; DOCKET NUMBER: 2012-1767-PST-E; IDENTIFIER: RN100647742; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Kul Devi Enterprises, Incorporated dba Super Food Mart 23; DOCKET NUMBER: 2012-1857-PST-E; IDENTIFIER: RN102436219; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $8,005; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: La Familia Retail, Incorporated dba Quick N Easy Beverage Barn; DOCKET NUMBER: 2012-2256-PST-E; IDENTIFIER: RN101737575; LOCATION: Poteet, Atascosa County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(31) COMPANY: LAKE LIVINGSTON WATER SUPPLY AND SEWER SERVICE CORPORATION; DOCKET NUMBER: 2012-0125-PWS-E; IDENTIFIER: RN101209294; LOCATION: Shepherd, San Jacinto County; TYPE OF FACILITY: public water

supply; RULE VIOLATED: 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage that is readily accessible outside the chlorinator room and is immediately available to the operator in the event of an emergency; and 30 TAC §290.45(b)(1)(C)(i), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: $817; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: LAU ENTERPRISES LLP dba In & Out Food Mart; DOCKET NUMBER: 2012-2259-PST-E; IDENTIFIER: RN102281839; LOCATION: Coldspring, San Jacinto County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: Louie Reagan dba Bald Prairie Store; DOCKET NUMBER: 2012-2095-PST-E; IDENTIFIER: RN105001366; LOCATION: Franklin, Robertson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: LUCKY ENTERPRISES, INCORPORATED dba Lucky Mini Mart; DOCKET NUMBER: 2012-2094-PST-E; IDENTIFIER: RN101659563; LOCATION: Temple, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $3,879; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(35) COMPANY: Manasiya Properties, Incorporated dba The Express 2; DOCKET NUMBER: 2012-1906-PST-E; IDENTIFIER: RN105248181; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: MIRZIANS, INCORPORATED dba M & R Food Mart; DOCKET NUMBER: 2012-2152-PST-E; IDENTIFIER: RN102373362; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: Mo's Exxon, Incorporated; DOCKET NUMBER: 2012-2323-PST-E; IDENTIFIER: RN101545770; LOCATION: Lavon, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,567; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Phero & Anna, Incorporated dba Lone Star Market 2; DOCKET NUMBER: 2012-2465-PST-E; IDENTIFIER: RN101447258; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,813; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(39) COMPANY: Randy Richardson; DOCKET NUMBER: 2011-1016-MLM-E; IDENTIFIER: RN106112907; LOCATION: Ben Wheeler, Van Zandt County; TYPE OF FACILITY: aluminum and nickel recovery; RULE VIOLATED: 30 TAC §335.2(a) and §335.43 and 40 Code of Federal Regulations (CFR) §270.1(c), by failing to obtain a permit for the processing, storage, and disposal of industrial solid and hazardous waste; 30 TAC §335.4(1) and TWC, §26.121, by failing to prevent the unauthorized discharge of industrial solid and hazardous waste; 30 TAC §§335.62, 335.503(a) and 335.513 and 40 CFR §262.11, by failing to conduct hazardous waste determinations and classifications on wastes received for treatment, storage, and disposal from off-site generators; 30 TAC §335.6(a) and (c), by failing to provide notification to the TCEQ for a facility that recycles, stores, processes, or disposes of industrial solid and hazardous waste and to provide written notification for all solid waste management activities; 30 TAC §335.69(a)(1)(A) and 40 CFR §262.34(a)(1)(i) and §265.173(a), by failing to keep containers of hazardous waste closed except when adding or removing waste; 30 TAC §335.69(a)(3) and 40 CFR §262.34, by failing to clearly label containers used to store hazardous waste with the words Hazardous Waste; 30 TAC §335.63(a) and 40 CFR §262.12(a), by failing to obtain a United States Environmental Protection Agency Identification Number prior to the treatment, storage, and disposal of hazardous waste; 30 TAC §335.9(a)(1), by failing to keep records pertaining to hazardous and industrial solid waste management or treatment activities; 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating an industrial furnace used to melt aluminum and burn nickel filters for metal recovery; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition of outdoor burning; PENALTY: $61,017; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(40) COMPANY: Rick Eager dba Town and Country Airport; DOCKET NUMBER: 2012-1942-PST-E; IDENTIFIER: RN102277076; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $4,068; ENFORCEMENT COOR-

DINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(41) COMPANY: Ronnie E. Day dba Lone Star Child Care Center; DOCKET NUMBER: 2012-2182-PWS-E; IDENTIFIER: RN106339245; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform; and 30 TAC §290.109(f)(1)(B) and THSC, §341.031(a), by failing to comply with acute MCL for fecal coliform and *escherichia coli;* PENALTY: $686; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(42) COMPANY: SHAREE G.A., INCORPORATED dba Day & Nite Foods; DOCKET NUMBER: 2012-2310-PST-E; IDENTIFIER: RN102847167; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,879; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(43) COMPANY: Soon I. Chin dba Stan C Store; DOCKET NUMBER: 2012-2221-PST-E; IDENTIFIER: RN103731832; LOCATION: Killeen, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $3,505; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(44) COMPANY: SPARKY FUELS, INCORPORATED dba Super Sak 2; DOCKET NUMBER: 2012-2501-PST-E; IDENTIFIER: RN102051018; LOCATION: Quitman, Wood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,813; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(45) COMPANY: Superior Pipeline Texas, L.L.C.; DOCKET NUMBER: 2012-1818-AIR-E; IDENTIFIER: RN104377981; LOCATION: Canadian, Hemphill County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §101.201(b) and Texas Health and Safety Code (THSC), §382.085(b), by failing to create a final record for all non-reportable emissions events no later than two weeks after the end of the emissions event; Federal Operating Permit (FOP) Number O3078/General Operating Permit (GOP) Number 514, Site Wide Requirements (b)(9)(B)(iv)(a), 30 TAC §122.143(4), and THSC, §382.085(b), by failing to conduct visible emissions observations of stationary vents at least once during each calendar quarter; FOP Number O3078/GOP Permit Number 514, Site Wide Requirements (b)(8)(E)(ii), Standard Permit Registration Number 96594, 30 TAC §122.143(4) and §116.615(2), and THSC, §382.085(b), by failing to comply with the permitted volatile organic compound (VOC) emissions rate of 0.16 pound per hour (lb/hr) for the Plant A and B Dehydrator Still Vent Emission Point Number (EPN) SC-1 and 0.10 lb/hr for the Bailey Dehydrator Still Vent (EPN SC-2); FOP Number O3078/GOP Number 514, Site Wide Requirements (b)(2), 30 TAC §122.143(4) and §122.145(2), and THSC, §382.085(b), by failing to report all instances of deviations; FOP Number O3078/GOP Number 514, Site Wide Requirements (b)(8)(E)(ii), Standard Permit Registration Number 96594, 30 TAC §116.615(2) and §122.143(4), and THSC, §382.085(b), by failing to comply with the permitted VOC emissions rate of 0.29 tons per year for the Bailey Dehydrator Still Vent (EPN SC-2); and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain the proper authorization for a storage tank; PENALTY: $33,825; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(46) COMPANY: Syeda Farhana Zarrin dba Corner Market; DOCKET NUMBER: 2012-1978-PST-E; IDENTIFIER: RN101821965; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the underground storage tank system; PENALTY: $2,943; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(47) COMPANY: T.N.A. GROUP, INCORPORATED dba Storm Convenience Store; DOCKET NUMBER: 2012-0908-PST-E; IDENTIFIER: RN100704048; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $2,550; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(48) COMPANY: Upham Oil & Gas Company, L.P. dba Upham Hanger; DOCKET NUMBER: 2012-2114-PST-E; IDENTIFIER: RN102430527; LOCATION: Mineral Wells, Parker County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the USTs; PENALTY: $2,580; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(49) COMPANY: Z.K.L. ENTERPRISE, INCORPORATED dba Step N Go; DOCKET NUMBER: 2012-2053-PST-E; IDENTIFIER: RN102347770; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(50) COMPANY: ZIO INVESTMENTS, LLC dba LCM Mart and Zahid Raza dba LCM Mart; DOCKET NUMBER: 2012-2348-PST-E; IDENTIFIER: RN101874683; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gaso-

line; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201300587
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2013

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Enforcement Orders

A order was entered regarding Joe Menaldi dba Ransom Canyon Center and Joseph Adam Corporation dba Ransom Canyon Center, Docket No. 2009-0890-PWS-E on February 1, 2013, assessing $2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

An agreed order was entered regarding Krebs Utilities, Inc. dba Estates Water Corp, Docket No. 2010-1752-UTL-E on February 1, 2013, assessing $436 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Krebs Utilities, Inc. dba K Lake Terrace, Docket No. 2010-1753-UTL-E on February 1, 2013, assessing $452 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Krebs Utilities, Inc. dba Roving Meadows Water System, Docket No. 2010-1835-UTL-E on February 1, 2013, assessing $508 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pasadena Refining System, Inc, Docket No. 2010-2073-AIR-E on February 1, 2013, assessing $757,153 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District No. 89, Docket No. 2011-1214-MWD-E on February 1, 2013, assessing $17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hubbard, Docket No. 2011-1381-MWD-E on February 1, 2013, assessing $52,708 in administrative penalties with $10,541 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Josephine Guzman dba Guzman Quality Cleaners, Docket No. 2011-1665-MLM-E on February 1, 2013, assessing $12,000 in administrative penalties with $8,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exide Technologies, Docket No. 2011-1712-IHW-E on February 1, 2013, assessing $592,868 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Virgil Ponce, Docket No. 2011-1744-IHW-E on February 1, 2013, assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROLLINS & ROLLINS ENTERPRISES, INC. dba Mr. Wills, Docket No. 2011-1890-PST-E on February 1, 2013, assessing $13,739 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A NUMAN, INC. dba A Food Mart, Docket No. 2011-1915-PST-E on February 1, 2013, assessing $13,870 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vance Jackson Retail, LLC dba Big Star Food Mart, Docket No. 2011-2053-PST-E on February 1, 2013, assessing $9,729 in administrative penalties with $1,945 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Original Adventure Camp Inc, Docket No. 2011-2174-PWS-E on February 1, 2013, assessing $1,536 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALIA ENTERPRISES, INC. dba Monroe Texaco, Docket No. 2011-2216-PST-E on February 1, 2013, assessing $8,770 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mullin, Docket No. 2011-2330-MWD-E on February 1, 2013, assessing $11,500 in administrative penalties with $2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gruver, Docket No. 2011-2342-MWD-E on February 1, 2013, assessing $11,965 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Whitney Resorts, LLC, Docket No. 2012-0022-PWS-E on February 1, 2013, assessing $11,827 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & G STORE LLC dba ONE STOP, Docket No. 2012-0054-PST-E on February 1, 2013, assessing $8,272 in administrative penalties with $1,654 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magnablend, Inc., Docket No. 2012-0251-MLM-E on February 1, 2013, assessing $38,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald R. Davis and Daniel L. Davis, Docket No. 2012-0395-MSW-E on February 1, 2013, assessing $7,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MRV Corporation dba Tiger Stop 2, Docket No. 2012-0485-PST-E on February 1, 2013, assessing $7,652 in administrative penalties with $1,529 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Platis dba South Main Diamond, Docket No. 2012-0556-PST-E on February 1, 2013, assessing $58,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COBRA STONE, INC., Docket No. 2012-0586-MLM-E on February 1, 2013, assessing $10,188 in administrative penalties with $2,037 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duval County, Docket No. 2012-0597-MSW-E on February 1, 2013, assessing $8,915 in administrative penalties with $1,783 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Lion Sarmiento dba Unique Toyz, Docket No. 2012-0601-AIR-E on February 1, 2013, assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Aviation Administration, Docket No. 2012-0678-PST-E on February 1, 2013, assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leonard Denton, Docket No. 2012-0762-PWS-E on February 1, 2013, assessing $1,322 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Absolute Fuels, LLC, Docket No. 2012-0813-IHW-E on February 1, 2013 assessing $1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Products North America Inc., Docket No. 2012-0839-AIR-E on February 1, 2013, assessing $33,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paula Reagan dba Lucky Roadhouse BBQ, Docket No. 2012-0849-PWS-E on February 1, 2013, assessing $2,810 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ernesto Garcia, Docket No. 2012-0859-MSW-E on February 1, 2013, assessing $1,275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mineral Wells, Docket No. 2012-0921-MLM-E on February 1, 2013, assessing $21,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Birmingham Resources, LLC, Docket No. 2012-0948-MLM-E on February 1, 2013, assessing $34,124 in administrative penalties with $6,824 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New TelAir Inc dba Hobby Food Mart, Docket No. 2012-0954-PST-E on February 1, 2013, assessing $7,784 in administrative penalties with $1,556 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Central State Shingle Recycling LLC, Docket No. 2012-0976-WQ-E on February 1, 2013, assessing $5,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Varughese Philip dba Richwood Food Market, Docket No. 2012-1005-PST-E on February 1, 2013, assessing $9,691 in administrative penalties with $1,938 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M.R.D. GROUP, INC. dba Shaver Food Mart, Docket No. 2012-1013-PST-E on February 1, 2013, assessing $8,670 in administrative penalties with $1,734 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Union Pipeline, Ltd., Docket No. 2012-1047-AIR-E on February 1, 2013, assessing $9,700 in administrative penalties with $1,940 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rosebud, Docket No. 2012-1106-PWS-E on February 1, 2013, assessing $2,002 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Delta Business LLC dba Delta Food Mart 2, Docket No. 2012-1164-PST-E on February 1, 2013, assessing $17,550 in administrative penalties with $3,510 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pecan Pipeline Company, Docket No. 2012-1168-AIR-E on February 1, 2013, assessing $16,250 in administrative penalties with $3,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Guardian Industries Corp., Docket No. 2012-1173-AIR-E on February 1, 2013, assessing $9,842 in administrative penalties with $1,968 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. & A. GROCERY, INC. dba Meyer's Kwik Stop, Docket No. 2012-1208-PST-E on February 1, 2013, assessing $9,129 in administrative penalties with $1,825 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shenandoah, Docket No. 2012-1213-MWD-E on February 1, 2013, assessing $16,900 in administrative penalties with $3,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Petrolia, Docket No. 2012-1235-PWS-E on February 1, 2013, assessing $410 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hansford Hospital dba Hansford County Hospital District, Docket No. 2012-1280-PST-E on February 1, 2013, assessing $7,650 in administrative penalties with $1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201300608
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 13, 2013

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Notice of Water Quality Applications

The following notices were issued on February 1, 2013, through February 8, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

LAJITAS MUNICIPAL SERVICES COMPANY LLC which operates Lajitas Water Treatment Plant, has applied for a major amendment to TCEQ Permit No. WQ0004378000 to decrease the area available for irrigation from 140 acres to 55 acres. The existing permit authorizes the disposal of electrodialysis reversal (EDR) treatment process wastewater (reversal wastewater, membrane blowdown, waste acid solution) and filter backwash via irrigation of 140 acres of turf grass. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located approximately 400 feet south of Ranch-to-Market Road 170 and 2,000 feet east of the Rio Grande River in the City of Lajitas, Brewster County, Texas 79852.

MOTIVA ENTERPRISES LLC AND FLINT HILLS RESOURCES PORT ARTHUR AND LLC AND AFTON CHEMICAL ADDITIVES CORPORATION which operates the waste water treatment system at the Motiva Port Arthur Refinery, have applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment with renewal to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000414000 to authorize a reduction of the monitoring frequency for total suspended solids, biochemical oxygen demand (5-day), chemical oxygen demand, oil and grease, ammonia as nitrogen, sulfides, phenolic compounds, total chromium and hexavalent chromium from once per day to three per week at Outfall 001; reduction of monitoring frequency for total organic carbon, total suspended solids, biochemical oxygen demand (5-day), chemical oxygen demand, oil and grease, ammonia as nitrogen, sulfides, phenolic compounds, total chromium, hexavalent chromium and pH from once per day to once per week at Outfall 002; reduction of monitoring frequency for total organic carbon, oil and grease and pH from once per day to once per week at Outfalls 003, 004, and 005a; reduction of monitoring frequency for total organic carbon and oil and grease from three times per week to once per week at Outfall 011; inclusion of an Other Requirement to note that the discharge of Praxair is monitored and limited under TPDES Permit No. WQ0004605000; and changing the method of measurement and sampling for pH at Outfall 011 from continuous and recorded to once per week by grab sample. The current permit authorizes the discharge of treated process wastewater and other refinery and petrochemical wastes such as but not limited to: Utility wastewater, tank bottom water, ballast water, hydrostatic test water, and water from groundwater recovery or drawndown wells at a daily average flow not to exceed 24,000,0000 gallons per day via Outfall 001; steam condensate, stormwater, hydrostatic test water, and treated process wastewater on an intermittent and flow variable basis via Outfall 002; steam condensate, stormwater, hydrostatic test water, and overflow from the clarifier sludge ponds on an intermittent and flow variable basis via Outfall 003; steam condensate, hydrostatic test water, and stormwater from the tank farms on an intermittent and flow variable basis via Outfalls 004 and 005; hydrostatic test water and overflows via spillways A and B from clarifier sludge ponds on an intermittent and flow variable basis via Outfall 008; steam condensate, hydrostatic test water, and treated stormwater from the aeration tank and other stormwater on an intermittent and flow variable basis via Outfall 011; steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfall 015; Zeolite softener backflush and hydrostatic test water at a daily average flow not to exceed 100,000 gallons per day via Outfall 016; steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfalls 012, 018, 019, 020, and 021. The draft permit authorizes the discharge of treated process wastewater and other refinery and petrochemical wastes such as but not limited to: Utility wastewater, tank bottom water, ballast water, hydrostatic test water, water from groundwater recovery or drawndown wells, treated stormwater from the aeration tank at a daily average flow not to exceed 24,000,0000 gallons per day via Outfall 001; steam condensate, stormwater, hydrostatic test water, treated process wastewater and Praxair Inc. (utility wastewater) on an intermittent and flow variable basis via Outfall 002; steam condensate, stormwater, hydrostatic test water, and overflow from the clarifier sludge ponds on an intermittent and flow variable basis via Outfall 003; steam condensate, hydrostatic test water, and stormwater from the tank farms on an intermittent and flow variable basis via Outfall 004; steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfall 005a; and steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfall 011. The facility is located at the northwest end of Houston Avenue in the City of Port Arthur, Jefferson County, Texas 77641; the Port Neches Terminal is located just east of the intersection of State Highway 366 and Farm-to-Market Road 136 and adjacent to the Neches River in the City of Port Neches, Jefferson County, Texas 77651.

THE SABINE MINING COMPANY which operates an existing surface lignite coal mine, South Hallsville No. 1 Mine - South Marshall Area, has applied for a major amendment to TPDES Permit No. WQ0002538000 to authorize the discharge of stormwater runoff and mine pit water on an intermittent and flow variable basis via Outfalls 017 - 020 in the active mining areas and post mining areas. The current permit authorizes the discharge of stormwater runoff and mine pit water on an intermittent and flow variable basis via Outfalls 001 - 016 and 021 - 062 in the active mining areas and post mining areas; and treated domestic wastewater not to exceed 0.006 million gallons a day (MGD) from Outfall 201. The facility is located at 6501 Farm Road 968 West, Hallsville, Harrison County, Texas 75650.

CITY OF CLIFTON has applied for a renewal of TPDES Permit No. WQ0010043001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located 200 yards south of Farm-to-Market Road

219 East, at the west bank of the North Bosque River in Bosque County, Texas 76634.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 74 has applied for a renewal of TPDES Permit No. WQ0010679001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 4735 Winfield Road, Houston, approximately 3,500 feet west-southwest of the intersection of U.S. Highway 59 and Aldine Mail Route in Harris County, Texas 77039.

WOODCREEK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011933001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day in the Final phase. The facility is located at 3118 Thorne Creek Lane, approximately 3,400 feet southeast of the intersection of Aldine-Westfield Road and Farm-to-Market Road 1960, on the south side of the Turkey Creek in Harris County, Texas 77073.

UNIVERSITY OF TEXAS AT AUSTIN has applied for a major amendment to TPDES Permit No. WQ0013646001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 7,000 gallons per day to a daily average flow not to exceed 15,000 gallons per day. The facility is located at 82 Mount Locke Road, McDonald Observatory, approximately 10 miles southeast of the intersection of State Highway 166 and State Highway 118 and approximately 10 miles northwest of Fort Davis in Jeff Davis County, Texas 79734.

MONARCH UTILITIES I LP has applied for a renewal of TPDES Permit No. WQ0014056001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 0.75 mile northwest of the intersection of State Highway 190 and the Trinity River and approximately 2.5 miles northeast of the intersection of State Highway 190 and Farm-to-Market Road 980 in San Jacinto County, Texas 77364.

AGUA SPECIAL UTILITY DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0014415003, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 7,550,000 gallons per day. The facility will be located approximately 1 mile South of West Loop 374, on the east side of Goodwin Road in Hidalgo County, Texas 78572.

CITY OF CORRIGAN has applied for a new permit, proposed TPDES Permit No. WQ0015057001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0010787001 which expired August 1, 2012. The facility is located approximately 0.25 mile east of the intersection of U.S. Highway 59 and East Ben Franklin Street in Polk County, Texas 75939.

PERRIN-WHITT CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0015059001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility will be located at 216 North Benson, Perrin, in Jack County, Texas 76486.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

DOUGLAS UTILITY COMPANY has applied for a minor amendment to the TPDES Permit No. WQ0011200001 to authorize an Interim phase with a permitted flow of 359,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 380,000 gallons per day. The facility is located at 5530 North Sam Houston Parkway East, approximately one mile west of U. S. Highway 59, and approximately 0.45 mile west of Lee Road in Harris County, Texas 77032.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201300607
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 13, 2013

♦ ♦ ♦

Department of State Health Services

Annual Republication of the Texas Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERSEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual republication of the Texas Schedules of Controlled Substances was signed by David L. Lakey, M.D., Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by a single asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.state.tx.us/dmd.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Allylprodine;

(3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(4) Alpha-methylfentanyl or any other derivative of Fentanyl;

(5) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenyl-propanamide);

(6) Benzethidine;

(7) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);

(8) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(9) Betaprodine;

(10) Clonitazene;

(11) Diampromide;

(12) Diethylthiambutene;

(13) Difenoxin;

(14) Dimenoxadol;

(15) Dimethylthiambutene;

(16) Dioxaphetyl butyrate;

(17) Dipipanone;

(18) Ethylmethylthiambutene;

(19) Etonitazene;

(20) Etoxeridine;

(21) Furethidine;

(22) Hydroxypethidine;

(23) Ketobemidone;

(24) Levophenacylmorphan;

(25) Meprodine;

(26) Methadol;

(27) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;

(28) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(29) Moramide;

(30) Morpheridine;

(31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(32) Noracymethadol;

(33) Norlevorphanol;

(34) Normethadone;

(35) Norpipanone;

(36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);

(37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(38) Phenadoxone;

(39) Phenampromide;

(40) Phencyclidine;

(41) Phenomorphan;

(42) Phenoperidine;

(43) Piritramide;

(44) Proheptazine;

(45) Properidine;

(46) Propiram;

(47) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(48) Tilidine; and

(49) Trimeperidine.

Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine-N-Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

(22) Normorphine;

(23) Pholcodine; and

(24) Thebacon.

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT;

(19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(20) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(21) Dimethyltryptamine (some trade and other names: DMT);

(22) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(23) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; taber-nanthe iboga);

(24) Lysergic acid diethylamide;

(25) Marihuana;

(26) Mescaline;

(27) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(31) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora,* whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(32) Psilocybin;

(33) Psilocin;

(34) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(35) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(36) Thiophene analog of phencyclidine (some trade or other names: 1-(2-thienyl)lohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP);

(37) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);

*(38) 4-methylmethcathinone (Other names: 4-methyl-N-methylcathinone; mephedrone);

*(39) 3,4-methylenedioxypyrovalerone(MDPV);

*(40) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine(Other names: 2C-E);

*(41) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other names: 2C-D);

*(42) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-C);

*(43) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-I);

*(44) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-2);

*(45) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-4);

*(46) 2-(2,5-Dimethoxyphenyl)ethanamine (Other names:2C-H);

*(47) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other names: 2C-N); and

*(48) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other names: 2C-P).

Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene-ethaneamine; N,N-alpha-trimethylphenethylamine).

Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

*Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes.

(1-1) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(1-2) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(1-3) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(1-4) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(1-5) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(2) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: CP-47,497);

(3) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol or CP-47,497 C8 homolog);

(4) 1-pentyl-3-(1-naphthoyl)indole (Other names:JWH-018 and AM678);

(5) 1-mutyl-3-(1-naphthoyl)indole (Other names: JWH-073);

(6) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);

(7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other names: JWH-200);

(8) 1-pentyl-3-(2-methoxyphenylacetyl)indole (Other names: JWH-250);

(9) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other names: JWH-081);

(10)1-pentyl-3-(4-methyl-1-naphthoyl)indole (Other names: JWH-122);

(11)1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other names: JWH-398);

(12) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (Other names: AM2201);

(13) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (Other names: AM694);

(14) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19 and RCS-4);

(15) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18 and RCS-8); and

(16) 1-pentyl-3-(2-chlorophenylacetyl)indole (Other names: JWH-203).

Schedule I temporarily listed substances subject to emergency scheduling

Any material, compound, mixture or preparation which contains any quantity of the following substances.

(1) 3,4-methylenedioxy-N-methylcathinone (methylone), its salts, isomers, and salts of isomers.

SCHEDULE II

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis.

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;

(1-2) Dihydroetorphine;

(1-3) Ethylmorphine;

(1-4) Etorphine hydrochloride;

(1-5) Granulated opium;

(1-6) Hydrocodone;

(1-7) Hydromorphone;

(1-8) Metopon;

(1-9) Morphine;

(1-10) Opium extracts;

(1-11) Opium fluid extracts;

(1-12) Oripavine

(1-13) Oxycodone;

(1-14) Oxymorphone;

(1-15) Powdered opium;

(1-16) Raw opium;

(1-17) Thebaine; and

(1-18) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil; and

(28) Tapentadol.

Schedule II stimulants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts;

(4) Phenmetrazine and its salts; and

(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital.

Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

(2-1) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(3) Immediate precursors to phencyclidine (PCP):

(3-1) 1-phenylcyclohexylamine; and

(3-2) 1-piperidinocyclohexanecarbonitrile (PCC).

(4) Immediate precursor to fentanyl:

(4-1) 4-anilino-N-phenethyl-4-piperidine (ANPP).

SCHEDULE III

Schedule III consists of:

Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isoners, and salts of isomers, for which an application is approved under section 505 of the Federal Food Drug and Cosmetic Act;

(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(7) Lysergic acid;

(8) Lysergic acid amide;

(9) Methyprylon;

(10) Sulfondiethylmethane;

(11) Sulfonethylmethane;

(12) Sulfonmethane; and

(13) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

Nalorphine

Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(1-4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) androstanediol

3 beta,17 beta-dihydroxy-5 alpha-androstane;

3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(2) androstanedione (5 alpha-androstan-3,17-dione);

(3) androstenediol--

(3-1) 1-androstenediol (3 beta,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-2) 1-androstenediol (3 alpha,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-3) 4-androstenediol (3 beta,17 beta-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3 beta,17 beta-dihydroxy-androst-5-ene);

(4) androstenedione--

(4-1) 1-androstenedione ([5 alpha]-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) bolasterone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(6) boldenone (17 beta-hydroxyandrost-1,4,-diene-3-one);

(7) boldione (androsta-1,4-diene-3,17-dione)

(8) calusterone (7 beta,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(9) clostebol (4-chloro-17 beta-hydroxyandrost-4-en-3-one);

(10) dehydrochloromethyltestosterone (4-chloro-17 beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

(11) delta-1-dihydrotestosterone (a.k.a. '1-testosterone') (17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(12) desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol)

(13) 4-dihydrotestosterone (17 beta-hydroxy-androstan-3-one);

(14) drostanolone (17 beta-hydroxy-2 alpha-methyl-5 alpha-androstan-3-one);

(15) ethylestrenol (17 alpha-ethyl-17 beta-hydroxyestr-4-ene);

(16) fluoxymesterone (9-fluoro-17 alpha-methyl-11 beta,17 beta-dihydroxyandrost-4-en-3-one);

(17) formebolone (2-formyl-17 alpha-methyl-11 alpha,17 beta-dihydroxyandrost-1,4-dien-3-one);

(18) furazabol (17 alpha-methyl-17 beta-hydroxyandrostano[2,3-c]-furazan);

(19) 13 beta-ethyl-17 beta-hydroxygon-4-en-3-one;

(20) 4-hydroxytestosterone (4,17 beta-dihydroxy-androst-4-en-3-one);

(21) 4-hydroxy-19-nortestosterone (4,17 beta-dihydroxy-estr-4-en-3-one);

(22) mestanolone (17 alpha-methyl-17 beta-hydroxy-5 alpha-androstan-3-one);

(23) mesterolone (1 alpha-methyl-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(24) methandienone (17 alpha-methyl-17 beta-hydroxyandrost-1,4-dien-3-one);

(25) methandriol (17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-5-ene);

(26) methenolone (1-methyl-17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(27) 17 alpha-methyl-3 beta, 17 beta-dihydroxy-5 alpha-androstane;

*(28) methasterone (2 alpha, 17 alpha-dimethyl-5-alpha-androstan-17 beta-ol-3-one;

(29) 17alpha-methyl-3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(30) 17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-4-ene;

(31) 17 alpha-methyl-4-hydroxynandrolone (17 alpha-methyl-4-hydroxy-17 beta-hydroxyestr-4-en-3-one);

(32) methyldienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9(10)-dien-3-one);

(33) methyltrienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9-11-trien-3-one);

(34) methyltestosterone (17 alpha-methyl-17 beta-hydroxyandrost-4-en-3-one);

(35) mibolerone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyestr-4-en-3-one);

(36) 17 alpha-methyl-delta-1-dihydrotestosterone (17 beta-hydroxy-17 alpha-methyl-5 alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');

(37) nandrolone (17 beta-hydroxyestr-4-en-3-one);

(38) norandrostenediol--

(38-1) 19-nor-4-androstenediol (3 beta, 17 beta-dihydroxyestr-4-ene);

(38-2) 19-nor-4-androstenediol (3 alpha, 17 beta-dihydroxyestr-4-ene);

(38-3) 19-nor-5-androstenediol (3 beta, 17 beta-dihydroxyestr-5-ene);

(38-4) 19-nor-5-androstenediol (3 alpha, 17 beta-dihydroxyestr-5-ene);

(39) norandrostenedione--

(39-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(39-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione;

(40) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(41) norbolethone (13 beta,17alpha-diethyl-17 beta-hydroxygon-4-en-3-one);

(42) norclostebol (4-chloro-17 beta-hydroxyestr-4-en-3-one);

(43) norethandrolone (17 alpha-ethyl-17 beta-hydroxyestr-4-en-3-one);

(44) normethandrolone (17 alpha-methyl-17 beta-hydroxyestr-4-en-3-one);

(45) oxandrolone (17 alpha-methyl-17 beta-hydroxy-2-oxa-[5 alpha]-androstan-3-one);

(46) oxymesterone (17 alpha-methyl-4,17 beta-dihydroxyandrost-4-en-3-one);

(47) oxymetholone (17 alpha-methyl-2-hydroxymethylene-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(48) stanozolol (17 alpha-methyl-17 beta-hydroxy-[5 alpha]-androst-2-eno[3,2-c]-pyrazole);

(49) stenbolone (17 beta-hydroxy-2-methyl-[5 alpha]-androst-1-en-3-one);

(50) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(51) testosterone (17 beta-hydroxyandrost-4-en-3-one);

*(52) prostanozol (17 beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole)

(53) tetrahydrogestrinone (13 beta,17 alpha-diethyl-17 beta-hydroxygon-4,9,11-trien-3-one);

(54) trenbolone (17 beta-hydroxyestr-4,9,11-trien-3-one); and

(55) any salt, ester, or ether of a drug or substance described in this paragraph.

Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol:(6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol).

SCHEDULE IV

Schedule IV consists of:

Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Dichloralphenazone;

(16) Estazolam;

(17) Ethchlorvynol;

(18) Ethinamate;

(19) Ethyl loflazepate;

(20) Fludiazepam;

(21) Flunitrazepam;

(22) Flurazepam;

(23) Halazepam;

(24) Haloxazolam;

(25) Ketazolam;

(26) Loprazolam;

(27) Lorazepam;

(28) Lormetazepam;

(29) Mebutamate;

(30) Medazepam;

(31) Meprobamate;

(32) Methohexital;

(33) Methylphenobarbital (mephobarbital);

(34) Midazolam;

(35) Nimetazepam;

(36) Nitrazepam;

(37) Nordiazepam;

(38) Oxazepam;

(39) Oxazolam;

(40) Paraldehyde;

(41) Petrichloral;

(42) Phenobarbital;

(43) Pinazepam;

(44) Prazepam;

(45) Quazepam;

(46) Temazepam;

(47) Tetrazepam;

(48) Triazolam;

(49) Zaleplon;

(50) Zolpidem; and

(51) Zopiclone, its salts, isomers, and salts of isomers.

Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenfluramine;

(5) Fenproporex;

(6) Mazindol;

(7) Mefenorex;

(8) Modafinil;

(9) Pemoline (including organometallic complexes and their chelates);

(10) Phentermine;

(11) Pipradrol;

(12) SPA [(-)-1-dimethylamino-1,2-diphenylethane]; and

(13) Sibutramine.

Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;

(2) Pentazocine, its salts, derivatives, compounds, or mixtures; and

(3) Carisoprodol.

SCHEDULE V

Schedule V consists of:

Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

*(1) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;

(2) Lacosamide [*(R)*-2-acetoamido-*N*-benzyl-3-methoxy-proprionamide]; and

(3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

TRD-201300541
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 11, 2013

♦ ♦ ♦

Commemorative Resolution of Agreement Between the State of Texas and U.S. Nuclear Regulatory Commission

Fifty years ago, an agreement between the State of Texas and the U.S. Atomic Energy Commission became effective. On January 10, 1963, (then) Governor Price Daniel entered into an agreement with the Atomic Energy Commission for Texas to assume regulatory responsibility for certain radioactive materials in the state under Section 274 of the Atomic Energy Act of 1954, as amended (Agreement). This act made Texas the fifth State to become an "Agreement State" effective March 1, 1963. Under the Agreement, Texas assumed all licensing and regulatory authority over radioactive materials in the state, with the exception of special nuclear material in excess of a critical mass and radioactive material utilized by federal agencies.

Texas is one of only three Agreement States that has regulatory authority over uranium recovery and low-level radioactive waste disposal in addition to the authority exercised under the basic Agreement. The Department of State Health Services regulates the safe operations of over 1,700 radioactive material licensees and over 20,000 x-ray, laser facilities, and mammography facilities. Through the Department of State Health Services, Texas was the first state to enact laser regulations; and the Department is the lead agency for emergency response planning and response to nuclear accidents. Also, the Department of State Health Services cooperates closely with the Texas Commission on Environmental Quality to safely regulate uranium mining, disposal of Low-Level Radioactive Waste, and non-oil and gas Naturally Occurring Radioactive Waste.

Therefore, be it resolved that the Texas Radiation Advisory Board hereby commemorates the 50th anniversary of the Agreement between Texas and the U.S. Nuclear Regulatory Commission, the successor to the Atomic Energy Commission, and that it honor all the individuals responsible for implementation and continuation of this historic compact.

TRD-201300596
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 12, 2013

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by FINANCIAL PACIFIC INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Rocklin, California.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201300499
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: February 7, 2013

♦ ♦ ♦

Correction of Error

The Texas Department of Insurance (TDI) adopted amendments to 28 TAC Chapter 34, concerning the State Fire Marshal, in the February 8, 2013, issue of the *Texas Register* (38 TexReg 662). An amendment to §34.501 was included in the adoption notice.

In the introductory paragraph of the preamble on page 662, TDI stated that §34.501 was adopted without changes and would not be republished. However, the rule text as submitted by TDI inadvertently included the words "of insurance". Although the text of the rule was not republished in the compiled issue of the *Texas Register,* the error was incorporated into the on-line databases for the Texas Register and the Texas Administrative Code. The correct text reads as follows:

§34.501. Purpose.

The purpose of this subchapter is to regulate the business of leasing, renting, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, or servicing of fixed fire extinguisher systems and to prohibit portable fire extinguishers, fixed fire extinguisher systems, and extinguisher equipment not labeled or listed by a testing laboratory approved by the commissioner in the interests of protecting and preserving lives and property pursuant to Insurance Code Chapter 6001.

TRD-201300606

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Land Acquisition - Nacogdoches County

Approximately 50 Acres as an Addition to the Alazan Bayou Wildlife Management Area

In a meeting on March 28, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of a tract of land of approximately 50 acres in Nacogdoches County for addition to the Alazan Bayou Wildlife Management Area. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Land Acquisition - El Paso County

660 Acres at Franklin Mountains State Park

In a meeting on March 28, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of a tract of land of 660 acres in El Paso County for addition to Franklin Mountains State Park. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Land Acquisition - Yoakum, Cochran and Terry County

Yoakum Dunes Preserve

In a meeting on March 28, 2013 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of known Lesser Prairie Chicken habitat lands as an addition to the Yoakum Dunes Preserve. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Request for Pipeline Easement - El Paso County

Fuel Transmission Pipeline at the Franklin Mountains State Park

In a meeting on March 28, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider the granting of an easement to Magellan Pipeline Company, L.P. for installation and operation of a welded steel refined fuel transmission pipeline of eight inch diameter across a portion of the Franklin Mountains State Park in El Paso County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201300605
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 12, 2013

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on February 8, 2013, to amend a state-issued certificate of

franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Baja Broadband, LLC to Amend Its State-Issued Certificate of Franchise Authority; Request the City of Iraan be Removed and Add the City of Van Horn, Project Number 41201.

The requested amendment is to remove the City of Iraan from its service area footprint and to add the City of Van Horn to its service area footprint.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All inquiries should reference Project Number 41201.

TRD-201300583
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2013

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 11, 2013, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Telecommunication Properties, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 41205.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant seeks to provide service within the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than March 1, 2013. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41205.

TRD-201300597
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 12, 2013

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On February 8, 2013, O1 Communications of Texas, LLC (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60310. Applicant seeks to relinquish the certificate. Applicant stated that the company was never operational.

The Application: Application of O1 Communications of Texas, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 41200.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than March 1, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41200.

TRD-201300582
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2013

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Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 5, 2013 for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act (PURA), §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Border to Border Communications, Inc. to Recover Funds from the Texas Universal Service Fund Pursuant to PURA §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41191.

The Application: Border to Border Communications, Inc. (BTBC) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to BTBC. The petition requests that the commission restore approximately $981,752.00 in funds from the TUSF to BTBC. BTBC is not seeking an increase in rates to offset the recovery of lost FUSF funds. BTBC stated it is an ILEC with fewer than 31,000 access lines and is eligible to recover funds from the TUSF.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 41191.

TRD-201300508
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2013

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*